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HEARINGS
BEFORE THE
SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES
EIGHTY-SEVENTH CONGRESS
FIRST SESSION
ON
H.R. 5023

AUGUST 9 AND 10, 1961

Serial P

Printed for the use of the Committee on Agriculture



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1961

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CONTENTS

H.R. 5023, a bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.....	Page 1
Department report on H.R. 5023, letter of April 27, 1961, from Hon. Orville L. Freeman, Secretary of Agriculture.....	3
Statement of—	
Bison, Henry, Jr., general counsel, National Association of Retail Grocers of the United States.....	84
Datt, John C., assistant to the director, Washington office, the American Farm Bureau Federation.....	80
Grange, George R., Deputy Director; accompanied by Nathan Koenig, Special Assistant to the Administrator; J. J. Diamond, Chief, Regulatory Branch; William E. Paulson, Head, License Section, Regulatory Branch, Fruit and Vegetable Division, Agricultural Marketing Service; and James E. Horton, Office of the General Counsel, U.S. Department of Agriculture.....	57, 113
McIntire, Hon. Clifford G., a Representative in Congress from the State of Maine.....	5
Mercker, A. E., executive director, National Potato Council.....	83
Naden, Kenneth D., secretary, National Council of Farmer Cooperatives.....	103
National Association of Wholesalers.....	119
Rains, Alan T., executive vice president, United Fresh Fruit & Vegetable Association.....	78
Rogers, Watson, president, National Food Brokers Association.....	105
United States Wholesale Grocers' Association, Inc.....	120
Communications submitted to the subcommittee:	
Campfield, Roy, Thriftway Stores, Inc., telegram of August 18, 1961..	123
Castiglione, Frank W., executive vice president, Western Growers Association, letter of August 4, 1961.....	122
Circle, Lee E., executive secretary, Kansas Food Dealers' Association, Inc., letter of August 17, 1961.....	123
David, Joffre C., secretary-treasurer, Florida Fruit & Vegetable Association, telegram of August 1, 1961.....	121
MacGregor, Hon. Clark, a Representative in Congress from the State of Minnesota, letter of August 8, 1961.....	122
Martin, George L., Martin's Finer Foods, letter of August 19, 1961..	123
Morgan, J. L., Raleigh, N.C., telegram of August 11, 1961.....	123
Murdock, Martin L., Murdock Brokerage Co., letter of August 16, 1961.....	124
Rains, Alan T., executive vice president, United Fresh Fruit & Vegetable Association, letter of August 9, 1961.....	121
Randolfe, R. H., Randy's Market, letter of August 18, 1961.....	124
Rogers, Watson, president, National Food Brokers Association, letter of August 10, 1961.....	111
Schauffler, Harry K., National Frozen Food Association, telegram of August 7, 1961.....	121
Smith, Harold O., Jr., executive vice president, U.S. Wholesale Grocers' Association, Inc., letter of August 11, 1961.....	122
Vogler, James B., executive vice president, North Carolina Food Dealers Association, Inc., letter of August 8, 1961.....	122

Additional information submitted:

Bulletin AMS-357: "What Retailers Should Know About Being Licensed Under the Perishable Agricultural Commodities Act"-----	Page 67
Commodities not under the Perishable Agricultural Commodities Act-----	118
Commodities under the Perishable Agricultural Commodities Act-----	116
Reports on PACA conferences by S. R. Smith, Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Depart- ment of Agriculture:	
April 10, 1959-----	6
April 26, 1960-----	25
April 24, 1961-----	41

PERISHABLE AGRICULTURAL COMMODITIES

WEDNESDAY, AUGUST 9, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to notice in room 1310, New House Office Building, the Honorable George Grant (chairman of the subcommittee) presiding.

Present: Representatives Grant, Jennings, Matthews, Inouye, Harding, Teague of California, Findley, and Beermann.

Also present: Representatives Hagen and McIntire, Christine S. Gallagher, clerk; Hyde H. Murray, assistant clerk; and John Heimbarger, counsel.

Mr. GRANT. The subcommittee will come to order.

The Subcommittee on Domestic Marketing is met this morning to consider H.R. 5023, a bill by our colleague Mr. McIntire, of Maine.

Mr. McIntire, we will be glad to hear from you.

(H.R. 5023 and the report of the Department, dated April 27, 1961, follows:)

[H.R. 5023, 87th Cong., 1st sess.]

A BILL To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Perishable Agricultural Act, 1930 (7 U.S.C. 499a), is amended by adding at the end thereof the following new paragraphs:

"(9) The term 'responsibly connected' means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

"(10) The terms 'employ' and 'employment' mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment."

SEC. 2. The third sentence of section 3(b) of such Act (7 U.S.C. 499c(b)) is amended to read as follows: "Upon the filing of the application, and annually thereafter, the applicant shall pay such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), but in no event shall such fee exceed \$50. Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the 'Perishable Agricultural Commodities Act Fund', which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above: *Provided*, That financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually. The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder

and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase."

SEC. 3. Section 3 of such Act (7 U.S.C. 499c) is further amended by adding at the end thereof the following new subsection:

"(c) A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant."

SEC. 4. Section 4(a) of such Act (7 U.S.C. 499d(a)) is amended by inserting before the period at the end thereof ": *And provided further*, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt."

SEC. 5. Section 4(b) of such Act (7 U.S.C. 499d(b)) is amended to read as follows:

"(b) The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is a person who, or is or was responsibly connected with a person who—

"(A) has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;

"(B) within two years prior to the date of application has been found after notice and hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;

"(C) within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491-497), relating to the prevention of destruction and dumping of farm produce; or

"(D) has failed, except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application."

SEC. 6. Section 4(c) of such Act (7 U.S.C. 499d(c)) is amended to read as follows:

"(c) Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided."

SEC. 7. Subsections (c) and (d) of section 6 of such Act (7 U.S.C. 499f) are amended by striking out "\$500" each place it appears and inserting in lieu thereof "\$1,500".

SEC. 8. Section 7(c) of such Act (7 U.S.C. 499g(c)) is amended by striking the second sentence thereof and substituting therefor the following: "Such ap-

peal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States."

SEC. 9. Section 7(d) of such Act (7 U.S.C. 499g (d)) is amended by striking the proviso at the end of the section and substituting therefor the following: "Provided, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied."

SEC. 10. Section 8(b) of such Act (7 U.S.C. 499h (b)) is amended to read as follows:

"(b) Except with the approval by the Secretary, no licensee shall employ any person who is or has been responsibly connected with any person—

"(1) whose license has been revoked or is currently suspended by order of the Secretary;

"(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

"(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee shall pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section."

SEC. 11. The Act of June 10, 1933 (48 Stat. 123; 7 U.S.C. 581-589), popularly known as the "Export Apple and Pear Act", is amended by adding at the end thereof a new section as follows:

"SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act."

APRIL 27, 1961.

HON. HAROLD D. COOLEY,
Committee on Agriculture,
House of Representatives.

DEAR CONGRESSMAN COOLEY: This is in reply to your letter of March 2, 1961, requesting a report on H.R. 5023, a bill to amend the provisions of the Perish-

able Agricultural Commodities Act of 1930, relating to practices in the marketing of perishable agricultural commodities.

The Department recommends passage of the bill.

The major purposes of the bill are to (1) improve and clarify the provisions relating to relicensing or employment of persons who have violated the act or have been affiliated with such persons, (2) provide that an oral hearing need not be held when the amount claimed as damages in a reparation complaint does not exceed the sum of \$1,500, (3) provide authority for the Secretary to increase the annual license fee to a maximum of \$50 if necessary to meet the expenses for administering this act and the so-called Produce Agency Act, and (4) provide that PACA license fees will not be used to finance the cost of administering the Export Apple and Pear Act and authorize appropriations for this purpose.

The bill revises provisions relating to relicensing or employing a person whose license has been suspended or revoked, or who has otherwise violated the act, as well as persons affiliated with such persons. These provisions as now written are ambiguous and inconsistent. For example, the minimum license debarment period following violation of the act presently ranges from 1 year to forever, although the nature of the different offenses does not justify the great disparity. Since the act is not a criminal statute, the only enforcement vehicle is the economic sanction of controlling a person's right to do business for himself or to be employed by another licensee. Most persons engaged in the industry are limited by training and experience to the fruit and vegetable business in seeking their most gainful livelihood. Consequently, frequent attempts are made to circumvent the law following revocation or suspension of a license. Effective enforcement of the act, therefore, rests on having comprehensive, clear, and equitable provisions relating to relicensing and employment which fully cover the situations encountered in this area in the fruit and vegetable industry.

The PAC Act presently provides that, in reparation proceedings, an opportunity for an oral hearing must be afforded at the respondent's place of business whenever the damages claimed exceed the sum of \$500. Otherwise a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied by depositions or verified statements of facts. The bill increases this sum to \$1,500. The sum of \$500 represented about the average value of a carload of fresh fruits and vegetables in 1930 when the act was passed. The average value today is nearer \$2,000. Handling of formal complaints can be expedited if the shortened procedure is authorized for those small sums involving not more than \$1,500 which no longer justify the time and expense incurred by the parties involved. The bill does not preclude the Secretary from granting an oral hearing where a complaint involves a sum less than \$1,500 whenever he concludes that a hearing is desirable in order to develop the evidence satisfactorily.

The bill deletes reference to the Export Apple and Pear Act approved June 10, 1933 (7 U.S.C. 561-589) with regard to the use of PACA license fees for administrative expenses. The Export Apple and Pear Act establishes minimum standards for export and has no connection with the PAC Act. The PACA special fund in which license fees are deposited should not be used for carrying out nonrelated activities. Such a change would entail financing the administrative costs of the Export Apple and Pear Act approximating \$25,000 per year from funds appropriated under the "Marketing services" appropriation. The change in financing would not require a budget increase. These costs would be those related to the development, promulgation, and enforcement of the required export standards.

There is an error of omission in the bill as it is printed. The title of the act is "Perishable Agricultural Commodities Act, 1930." On page 1, line 3, the word "Commodities" should be inserted after the word "Agricultural" to correct this error.

Administration of the PAC Act, except for the cost of legal services and partial coverage of retirement costs from appropriated funds, is financed from the license fees which are now fixed by the statute at a maximum of \$25 per year. PACA administrative expenses have exceeded collections for the past 2 years, necessitating withdrawals from the limited reserve fund. Under current operating costs, it would be impossible to provide effective and timely service to the industry at the present rate of assessment. An increase in the license fees, therefore, is urgently needed.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN.

STATEMENT OF HON. CLIFFORD G. McINTIRE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MAINE

Mr. McINTIRE. Thank you, Mr. Chairman and members of the committee.

H.R. 5023, a bill which I introduced on February 28, 1961, amends the provisions of the Perishable Agricultural Commodities Act. This act was passed in 1930, and under this act there has been and continues to be established a code of fair trade practices governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce.

Mr. Chairman and members of the committee, I think it is going to be much better if I conserve the time for other witnesses.

My experience in the fresh vegetable business, the shipping end of it, is the basis of my continuing interest in the act and its amendments.

The act is self-supporting. The fees that are collected are intended to be adequate to finance the expenses of administering the act. This is the purpose of one of the amendments in the bill I have introduced, because there is need for some adjustment in these fees.

One thing in particular I would like to point out to the committee is that the provisions of this bill are the result of very extensive conferences between the Department of Agriculture and the elements of the trade that are subject to the Perishable Agricultural Commodities Act.

To that point, Mr. Chairman, I would like to offer for the record three statements which have been prepared by S. R. Smith, Director of the Fruit and Vegetable Division. I think these three statements would be a very constructive addition to the record.

Mr. Chairman and members, that concludes my statement. The Department, and those representing elements of the trade, will be giving the committee a great deal of detail and ideas as to the need of amendment to the act and, also, the necessity of making some adjustment in the fees.

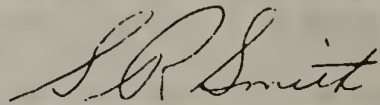
Mr. GRANT. Without objection, the statement offered by the gentleman from Maine will be received for the record.

(The statements dated April 10, 1959, April 26, 1960, and April 24, 1961, follow:)

April 10, 1959

TO INDUSTRY PACA CONFEREES:

It is not our intention to give the enclosed report general distribution or to publish it. On the other hand, in accordance with the view expressed by the conferees, the report is not intended to be restricted only for the use of the conferees. It will be made available, on request, to any interested party in the industry. All recipients of this report should recognize that it does not necessarily reflect the final views of the industry or governmental conferees because it has not been possible to give full and complete consideration to each of the subjects discussed.

A handwritten signature in cursive script, appearing to read "S. R. Smith".

S. R. Smith, Director
Fruit and Vegetable Division

Report of Conference Proceedings
on
Perishable Agricultural Commodities Act
January 30-31, 1959
Dallas, Texas

A second conference with fresh fruit and vegetable industry leaders and USDA representatives was held on January 30 and 31, 1959, to review the objectives and administration of the Perishable Agricultural Commodities Act. The primary purpose of this conference was to discuss in further detail certain major problems which were not fully covered or resolved at the conference held with the same group in June 1958 at Washington, D. C.

Mr. S. R. Smith, Director, Fruit and Vegetable Division, AMS, and Mr. F. R. Wilcox, General Manager, Sunkist Growers, again served as Co-Chairmen of the conference. The same industry leaders were invited to attend this second conference and, except for a few unavoidable absences, their response was excellent in contributing their time and money needed to attend this 2-day conference. Most of the conferees had discussed with their local trade groups the subjects covered by the conference agenda and were thus able to present the views of such groups rather than expressing only their own personal opinion.

Changes in Market Structure and Practices

There are a number of problems associated with changes in market structure and practices due to the concentration of purchases by large-scale buyers. These problems include pricing policies, procurement methods, types of contracts, rate of purchases, and related matters. Conference discussion, however, centered primarily around the subject of unjustified or questionable rejections by large buyers. Restated briefly, it is the viewpoint of many persons that PACA, as now written and applied, is ineffective in dealing with such violations of the Act by large buyers. The reason for this viewpoint is that complaints under the Act by individual sellers against large buyers are practically non-existent because of the alleged fear of alienating such customers. The net result, therefore, is that PACA rules and remedies governing unjustified breach of contract are not utilized by sellers when dealing with such buyers. This subject was discussed extensively at the June 1958 conference when USDA representatives agreed to look into possible remedial measures and to report further to the industry group.

Reporting Rejections. Industry representatives proposed at the June conference that a regulation be issued requiring all sellers and buyers to report all rejections to the Department, regardless of the alleged reason for the rejection. USDA officials have concluded that such a regulation, to be meaningful, would require an amendment to the Act. A regulation might now be issued as authorized by Section 15 but there is a substantial legal question whether a person who refused to make such reports could be penalized under the Act as it is now written. It would be undesirable to

issue a regulation of this type unless the law provided an adequate means of enforcement.

Such an amendment to the Act might be as follows: "Every commission merchant, dealer, or broker shall from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to carry out the provisions of this Act. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this section or for the purpose of obtaining the information required in any report, where it has been requested and not furnished, the Secretary is authorized to examine such accounts, records, and memoranda which he deems relevant. Whenever the Secretary determines that any commission merchant, dealer, or broker has failed to furnish complete, accurate, or timely reports, pursuant to this section, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days."

An amendment of this type would make it possible for USDA to issue regulations requiring that reports of rejections be furnished. The type of report would have to be spelled out in detail by the regulation. The industry might not want to initiate and support legislation which leaves entirely to the discretion of the Secretary the nature and type of reports which would be required. (Comparable authority, however, has been given to him in other regulatory laws. Also, a general reports provision might have several advantages because it could aid greatly in keeping up with changes in the industry and, consequently, in administration of the Act.) There does not appear to be any practical alternative because it is impossible to predict what information would be necessary. The first step might be to obtain a report on volume purchased for a definite period of time in order to determine who to place on the reporting list. Information on f.o.b. purchases might have to vary from wholesale market purchases because of differences in contract terms. The same situation might apply to different commodities or groups of commodities.

With only one or two exceptions, the industry representatives expressed the view that it would be highly desirable for the Act to contain a general reporting provision. As the discussions progressed to other subjects pertaining to licensing and bonding, the conclusion was reached that this authority for requiring reports from licensees would be useful. However, the industry group deferred for later consideration the question of whether reports of rejections should be initiated if the necessary legislative authority is granted. Most of the men who expressed an opinion on this subject favored some type of a reporting system to cover rejections. Several shippers stated that the faults did not lie entirely with the buyers and that a rejection report should help to pin down exactly what type of sales contract or agreement was involved. Many of the shippers seemed to believe that the sales policies were so loose that some shippers do not, in fact, negotiate an enforceable contract, but ship

merchandise to prospective buyers on a "look--see basis" with the understanding that if the buyers like the merchandise a contract for purchase and sale will be made after the prospective buyers' inspection. If this is true, and the prospective buyer does not enter into a purchase and sale contract after his inspection, there is, of course, no question of a rejection. It was agreed that if a reports system on rejections is adopted, such reports would not be considered as reparation complaints unless one of the parties specifically requested that the report be so considered. This means that the Department would not use the reports as a basis for handling the matter further with the parties for the purpose of recovery of any monies claimed due because of an evident breach of contract.

It was also agreed that, if reports of rejections are initiated, all parties to the transaction, including brokers, should be required to file a report. It was generally concluded that such reports should be kept as simple as possible and that some selectivity by commodities, areas, or type of buyers and sellers might be desirable in undertaking such a program. It was agreed that, if the Act was amended to give the Department authority to request reports, no request of a specific nature would be made until after the proposed report forms were made public under rule-making procedure so that all segments of the industry would know and understand what was involved and have an opportunity to comment on the proposal before it was established as a requirement.

Considerable attention was given to the question of whether or not a reporting requirement would result in changing the usual transaction from a purchase and sale contract to an option to buy so that, in effect, regardless of the buyer's actions he would have no rejections on his record. Some conference members believed that this would be the result because certain large buyers hold such a dominant position that the normal independent shipper or wholesaler will agree to any terms in order to obtain and retain their business. Others believed that reporting rejections would not encourage more Inspection and Acceptance on Arrival contracts, delivered selling, or options to purchase. It was their belief that these large merchandising organizations must plan ahead and, therefore, arrange for a continuity of supply. Also, frequently their operations are geared to various consumer advertising and other promotion programs. The men who took this view concluded therefore that most of these organizations were primarily interested in obtaining an adequate supply of top quality, properly packaged merchandise and could not operate under a hit-or-miss arrangement which would result from a large-scale shift away from firm contracts.

Although some of the pros and cons of a rejection reports system have been outlined above, it should be emphasized that the industry group as a whole deferred taking a position on it until the matter could be given further study and consideration. However, they definitely recommended that a change in the legislation should be sought which would give USDA the optional authority to require such reports if it is decided in the future that action

along these lines should be taken. It was agreed by the industry group, that, regardless of what action may be taken on reporting rejections, it would be highly desirable for other purposes to amend the PAC Act to include authority for requiring reports from licensees. As indicated later, these purposes include reports which would be needed to carry out effectively provisions of the Act and regulations relating to multiple trade names, bonding standards, and other licensing operations.

Greater Use by USDA of its Present Investigatory Powers. A combination of the various provisions of the Act clearly gives USDA authority for initiating investigations if it desires to do so. Section 6 states that any USDA employee may file a complaint of any violation. Section 13 states that the Secretary has the right to inspect such accounts, records, and memoranda that may be material in the investigation of complaints or to ascertain if the required accounts, records, etc., are being maintained. As discussed at the June conference, however, the USDA has consistently followed the practice of not initiating an investigation in the absence of a specific complaint by one of the parties involved in the transaction.

It would be possible for USDA, acting on general information, to open complaints against selected sellers and buyers to provide the legal basis for investigating their records to ascertain if unjustified rejections are being made. Even though both industry representatives and USDA have endorsed its current policy of only acting on those complaints involving specific transactions, it is difficult to rationalize not taking this direct approach if the matter of unjustified rejections is serious enough to warrant full support by the industry for such investigatory action by USDA.

At present, USDA has had so little opportunity to review the records of large, direct buyers that it has little specific knowledge of the type of records being maintained concerning contracts, warehouse inspection reports, notices to sellers, etc. Many questions exist as to whether a reporting system can be designed and enforced which can get at the rejection problem. The job is made increasingly difficult when the system is planned in the dark as the result of lack of information concerning existing contractual arrangements and records pertaining thereto. Use of the Department's present investigatory authority would offer one means of obtaining this information.

Any program of investigating records to develop information on unjustified rejections should cover both shippers and buyers. Probably the full story on many transactions would not be told unless the records of both parties were examined. The logical starting point might be the examination of the records of selected large shippers who sell to a number of direct buyers for delivery to different warehouses or regions. Examination of buyers' records could then be more selective, thus lessening the chance of getting bogged down at the start by possible differences in practices between different warehouses or districts within the same corporation. It is possible, however, that the selected shippers would regard an involuntary

examination of their records for this purpose as being personally harmful because the information obtained might jeopardize their relationship with such buyers.

Adoption of this procedure would be a departure from the policy which USDA has consistently followed of not initiating an investigation in the absence of a specific complaint by one of the parties involved in the transaction. After a thorough discussion of the subject, the conference group concluded that independent investigations by USDA should not be used at this time in trying to solve this problem. The industry representatives stated that they regard highly the industry-government relationship which has resulted from not using PACA regulatory authority as a policing tool in the absence of specific complaints concerning a particular transaction. They expressed the belief that this relationship should not be jeopardized by deviating from this principle even to try to solve this special problem of unjustified rejections. The approach might be successful, but they believed that the end would not justify the means. It was recognized, however, that it might eventually be necessary to employ this method if other alternative approaches prove to be unsuccessful.

Amend Act to Prohibit Discrimination. The PAC Act does not now contain any general prohibition against discriminatory practices. The word "discriminatory" is mentioned only in Paragraph (1) of Section 2 and is limited to methods of weighing, counting, or other means of measuring quantity. In fact, the only general prohibition contained in Section 2 deals with failure to perform any express or implied duty. This prohibition cannot be construed to cover the types of discriminatory action which might be taken in retaliation for a complaint under the Act.

It might be helpful to the industry to have the Act contain a general prohibition against unfair or discriminatory practices. Of course, such a prohibition would apply equally to sellers and buyers. The existence of such a prohibition might, in itself, discourage the use of retaliatory actions available through mass selling or buying power. Further, it would make possible appropriate disciplinary action in those cases where substantial evidence of such actions was available.

Such an amendment to the Act might be made by deleting Paragraph (1) of Section 2 and inserting the following:

"(1) For any commission merchant, dealer, or broker to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice; or to make or give any undue or unreasonable preference to any particular person in any respect whatsoever, or subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever in connection with any transaction in interstate or foreign commerce of any perishable agricultural commodity;"

The industry group recommended that no action be taken at this time on an "anti-discrimination amendment" because further study and consideration should be given its possible application and effectiveness before deciding if it would be desirable.

Other Methods. Other possible methods of approaching the problem of unjustified rejections by large buyers were discussed including research studies and a conference between USDA with the principal buyers. It was concluded that a research study would not be productive in view of the nature of the problem. The industry group believed that a conference between the principal buyers and USDA representatives might be quite helpful in clarifying the issues and in pointing the way toward possible remedies. It was recommended that USDA try to arrange for such a conference particularly if an expression of interest is obtained from the buyers.

Licensing and Employment

There was a detailed and extensive discussion of the requirements of the Act relating to relicensing or employment of individuals who have had their licenses revoked as compared with those whose licenses have been suspended for failure to pay reparation orders. The wording of the Act is complex and, in some cases, inconsistent or ambiguous dependent upon the type of violation involved. It was necessary, therefore, for the group to discuss the matter thoroughly in order to analyze the intricacies and ramifications of the problem. At the conclusion of this discussion, it was unanimously agreed that it would be desirable for the Act to be amended both to clarify the limitations regarding licensing and employment and to remove the existing inequities and inconsistencies.

The objective of such amendments would be to establish a clear-cut, definite basis for relicensing or employing individuals who have lost their license or who have committed an action prohibited by the Act at a time when they did not have an effective license. Questions regarding relicensing or employment arise quite frequently because most persons whose licenses are suspended or revoked are limited by training or experience to the fruit and vegetable business in seeking gainful employment or livelihood. The industry group agreed that such persons should not be kept out of the fruit and vegetable business indefinitely but, on the other hand, reasonable penalties must be provided if the Act is to be effective. (It should be borne in mind that the PAC Act is not a criminal statute and the only penalty which can be imposed against a licensee is the economic sanction of controlling a person's right to do business on his own or as an employee, officer, or partner of a licensee. He may, of course, be fined for doing business without a valid license.)

Recommendations on licensing and employment provisions were as follows:

Summary of Present and Proposed Time Periods and Bonding
Requirements for Different Types of Violations

Type of Violation	Relicense		Employment	
	Present	Proposed	Present	Proposed
1. Revocation and Unpaid Reparations/1				
A. Mandatory debarment period	Forever/2	2 years	1 year	1 year
B. Waiting period with bond	Forever/2	2 years	1 year	1 year
C. Waiting period W/O bond	Forever/2	3 years	Indefinite	2 years
D. Length of bond/3	N.A. /4	4 years	No Limit	4 years

2. Revocation Only

A. Mandatory debarment period	1 year	2 years	1 year	1 year
B. Waiting period with bond	1 year	2 years	1 year	1 year
C. Waiting period W/O bond	1 year	3 years	Indefinite	2 years
D. Length of bond/3	2 years	4 years	No Limit	4 years

3. Unpaid Reparations Only/5

A. Mandatory debarment period	2 years	2 years	None/6	None
B. Waiting period with bond	No Auth.	2 years	1 year/6	None
C. Waiting period W/O bond	2 years	3 years	Indefinite	2 years
D. Length of bond/3	No Auth.	4 years	No Limit	4 years

- /1. Whenever reparations are paid, the person automatically moves into Category 2 - "Revocation Only".
- /2. The PAC Act now states that, following revocation, a person may be relicensed after 1 year if he posts a bond guaranteeing payment of all past reparation orders. This has the effect of making payment mandatory before such a person can ever be relicensed.
- /3. Length of bond refers to number of years it remains in effect after date of relicensing or employment.
- /4. Not Applicable. Cannot be relicensed until reparations are paid.
- /5. If licensee pays reparation order, he is automatically reinstated. If licensee goes into bankruptcy, he may be relicensed immediately upon posting a bond.
- /6. There is no mandatory debarment period but a bond cannot be required during the first year.

Basis for Above Recommendations. The above recommended changes in the Act relating to relicensing and employment are for the purpose of correcting inconsistencies. Restrictions would be more lenient in some instances and tighter in others. Surety bonds would have to be posted in a number of

situations where they are not now required. On the other hand, persons in certain instances could be relicensed or employed sooner than now permitted. The important factors involved in changes recommended are:

Establish the mandatory debarment period of 2 years for relicensing following revocation, automatic suspension for failure to pay reparation orders, or a combination of revocation and automatic suspension. Presently, these mandatory periods range from one year to forever. The nature of the offenses does not justify this great disparity. The debarment period after revocation should not be less than it is after automatic suspension. Also, Department may revoke licenses for flagrant or repeated violations even though creditors may not choose to file formal complaints and follow them through to conclusion knowing that the respondent is insolvent. Therefore, it is obviously inequitable to have a debarment period of from one year to forever following revocation, dependent upon whether unpaid reparation orders are also involved.

No authority now exists for bonding a person who does not pay a reparation order and applies to be relicensed. It is recommended that an appropriate bond be required or, otherwise, make him wait an additional year (3 years altogether) before he can be relicensed. (Note of explanation concerning the conference discussion. The specific period of 3 years for relicensing following suspension for failure to pay a reparation order was not discussed at the conference. However, it was agreed that such a person should be required to wait one additional year if he does not post a surety bond. It was also agreed unanimously that the waiting period with bond should be two years and therefore the waiting period without bond automatically becomes 3 years.)

The bonding provision following revocation now covers payment of reparation orders which "may be issued against him within two years following the date of the license." This is an extremely short period of protection because it often takes more than a year following the date of the transaction for a reparation order to be issued. It is believed that a four-year bonding period would be more realistic and desirable.

There are a number of inconsistencies regarding employment of persons whose license has been revoked or suspended. There is no limit on the period intervening between the date of revocation or suspension and the date employment may be permitted nor is there any limitation on how long the bond can be required to be maintained. This is much broader than the present bonding provision relating to relicensing following revocation. If a surety bond is not posted, it is believed that the mandatory waiting period should be 2 years (as compared with 3 years in the case of relicensing).

Employment during the first year following automatic suspension may be prohibited but a bond cannot be required until after one year has elapsed. It is believed that a person should not be barred from employment by another licensee for a minimum period of one year. The primary intent of

this 1956 amendment to the Act was to prevent him from evading the penalty by continuing to do business under the shield of another person's license through a dummy or figurehead arrangement. However, experience has shown that it is not possible in many instances to ascertain if the arrangement is a subterfuge or a legitimate employer-employee relationship. It is believed that employment by another licensee should be permitted immediately following automatic suspension provided the employer posts an adequate surety bond. This should effectively rule out most of the dummy-front cases but still permit legitimate employment by financially responsible firms. This provision would also apply to a person who is an officer or holds a position with another licensed firm since he would be permitted to continue his affiliation without interruption if the other firm posted a satisfactory surety bond. (In the case of revocation, such a person would have to resign from the other firm for a period of one year following the date of revocation.)

There were three additional recommendations applicable only to the provisions of the Act relating to employment, as follows:

Change the definition of employment by deleting the term "responsible position" and make the limitations applicable to any position.

Clarify the language of the Act to indicate that self-employment (i.e., owner of a firm) is under the same limitations as are imposed on a person who is employed by another firm.

Clarify the language of the Act to indicate that a person whose license had lapsed or who had failed or refused to obtain a license, at the time the violation occurred or the Department's order was issued, is in the same category as those who had a valid license.

Basis for Above Recommendations. The Act, as now written, places no limitations on the employment by another licensee of a person who has violated the Act unless he is employed in a "responsible" position. Experience has demonstrated that it is not possible to obtain satisfactory evidence to prove that a person holds a "responsible" position if his employer and he want to hide their working arrangement. Therefore, the application of limitations on employment in dealing with violators varies dependent on the willingness and interest of the employer (often a relative) in hiding the actual arrangements. (For example, it is hard to believe that a wife can step in after her husband's license has been suspended or revoked, hire him in a subordinate position, and not permit him to be responsible for any significant business decisions or actions.) It is believed that the limitations on employment should apply to anyone on the payroll of a licensee with the standard debarment periods or bonding requirements dependent on the nature of the violation.

There is some legal doubt that self-employment constitutes "employment" within the meaning of the Act as now written. This question arises when a firm has its license suspended or revoked and the officers or partners also hold licenses as individuals. There is even more reason to place restrictions on a person who is running his own business than there is on one who is working for another licensee. Therefore, the language of the Act should be clarified in this respect.

The present wording of the Act relating to employment refers to a person "whose license has been revoked or is under suspension." There is some doubt that there is a legal suspension or revocation unless there is a valid license on the effective date of the Secretary's order. Persons sometimes do not renew a license on its anniversary date when formal reparation complaints or disciplinary actions have been filed against them. Consequently, such licenses may lapse prior to the effective date of the Secretary's order. A person should not be permitted to escape the consequences of his actions by allowing his license to lapse or by failing to obtain a license in the first place. Therefore, any possible legal deficiency in this respect should be corrected by clarifying the language of the Act.

Licenses for each Legal Entity. It was pointed out to the conference group that the PACA regulations always have contained the requirement that a person engaged in business in more than one name must have a license for each trade name that he uses. However, the Act lists "individuals, partnerships, corporations, and associations" in referring to those who require a license. Therefore, there is considerable legal doubt that a person (i.e., each separate legal entity) can be required to have more than one individual license regardless of how many trade names he uses in conducting his business. The conference group agreed that the regulations should be revised to coincide with the provisions of the Act to permit firms conducting business under more than one trade name to be covered by one license. If separate legal entities are involved, separate licenses will be required. The conference group also recommended that all licensees be required to submit proposed trade names to USDA for approval prior to their being used. Such a procedure is desirable in order to avoid the use of trade names which are similar to those of established firms operating in the same general trading area. The authority of the proposed general reporting provision of the Act would be used by USDA to obtain information from licensees concerning any changes in trade names or new trade names prior to their being adopted.

Bonds. The conference group endorsed the existing requirement that bankrupts be required to furnish acceptable surety bonds whenever a license is granted within 3 years following the date of adjudication or discharge in bankruptcy. The practice was approved of basing the amount of such bonds on the volume of business being conducted and not on the past history of the bankrupt. The group recommended that the Act be amended to authorize increasing or decreasing the amount of the bond, dependent upon the volume of business rather than as now having to fix this amount permanently at the time the application for license is received. The authority of the proposed general reporting provision of the Act would be used to require licensees to provide the necessary information on their volume of business.

Retailer Licenses. Questions concerning retailer licensing were considered in four separate parts:

1. What authority is there to consider that a retailer is a "dealer" under the Act and thereby subject to license?

The authority for and congressional intent to include retailers is clearly expressed in the Act. There is a separate provision specifically covering retailers which states that "no person buying any such commodity solely for sale at retail shall be considered as a dealer . . . in any calendar year until his purchases (in wholesale quantities) are in excess of 20." Therefore, the only distinction between a retailer and a regular wholesaler is that retailers must purchase at least one ton or more of produce per day for at least 21 days in a calendar year before he is subject to license, whereas a wholesaler is subject to license when he engages in business.

2. Why should purchases by retailers from local wholesale dealers be considered as "transactions in interstate commerce" and thereby subject to the Act?

The PAC Act uses the term "part of that current of commerce usual in the trade" in defining interstate or foreign commerce. The Federal courts have consistently held that the current of interstate commerce is not limited just to the transaction which moves the goods from one State to another State. There may be one or more transactions before a lot is shipped from the State of origin or after it arrives within the State of destination and all of these transactions are part of the current of interstate commerce. This same situation applies to other dealers or wholesalers and is not limited to retailers. Many of the complaints under the PAC Act involve disputes between two licensees located in the same State involving lots of produce which have moved or are moving in interstate commerce. The coverage of the Act would be significantly restricted if it were amended to limit its jurisdiction to only those transactions involving direct purchases or shipments from one State to another State.

3. What justification is there for defining a wholesale quantity as purchases and sales of not less than one ton in weight per day and thereby require many "small retailers" to be licensed?

The Act requires that the Secretary establish a definition of a "wholesale quantity" for the purpose of determining which dealers are subject to license. The definition of one ton per day has been in effect since 1932 and applies to all other dealers as well as to retailers. It has been claimed that this definition is now archaic because of changes in retailer procurement practices and schedules, thus making many "small grocers" subject

to license.

USDA employed a nationally-known firm to conduct a statistical survey in 1955 to determine the number of independent grocers which would be subject to license at various levels of daily procurement. The results of this survey indicate that, for practical purposes, only supermarkets (stores with total sales of \$375,000 per year) are subject to license under the existing one ton per day definition. It was estimated that these stores represented about 2.4 percent of the independent retail firms by number and 43 percent by volume of business. When combined with chain stores, this coverage represented 64 percent of the total volume of business. It was concluded that the existing one ton per day definition was realistic and practicable in its application to retailers and that "small grocers" were not being unnecessarily subjected to PACA licensing costs and requirements. With 97.6 percent of the independent retailers excluded, no other conclusion is logical. It probably would be desirable if a "wholesale quantity" for retailers could be defined in terms of value instead of quantity. All of their records normally are kept in dollars and many do not know the net weight of their purchases of fresh and frozen fruits and vegetables. The Act as now worded, however, does not authorize a different standard or definition for wholesalers than for other dealers.

4. Why should not each individual outlet in a chain store organization be required to purchase a separate license rather than only one license for an entire chain?

The Act as now written requires a separate license for each legal entity, which the Act defines as each individual, partnership, corporation, or association. Therefore, there is presently no legal authority to require additional licenses or payment of additional fees dependent upon the number of stores operated by a retail firm or the number of outlets operated by other dealers. Furthermore, a retailer comes under the Act only in his capacity as a buyer . . . his retailing functions as such are not covered. Therefore, the number of stores operated by a firm is incidental. Action under PACA is taken against the firm or person involved not against an individual store and the seller usually does not know the different individual stores to which his product was distributed from a chain store warehouse.

The industry representatives expressed the view that the present coverage of retailers under the PAC Act appeared to be realistic and justifiable. They concluded that no changes were warranted in either the Act or the regulations except, if supported by the retailer trade groups, they would favor an amendment to the Act establishing a dollar value definition applicable to retailers which would be equivalent to the wholesale quantity definition applicable to other dealers.

Trade Terms and Definitions

Suitable Shipping Condition. The subject of suitable shipping condition was discussed thoroughly at the conference. There was unanimous agreement between the shipper and buyer representatives that a shipper's responsibility under a regular f.o.b. sale does not stop when goods meeting the contract specifications have been loaded at shipping point. The shipper also gives an implied warranty and guaranty that the goods are in satisfactory merchantable condition and, therefore, will stand normal transportation to the specified destination. On the other hand, the buyer has the responsibility of accepting all goods at full f.o.b. contract price which are delivered in good condition. It was unanimously agreed that it would be desirable, if possible, to clarify the definition of good delivery so that the determination could be made against a more exact set of guidelines than presently exists under the "abnormal deterioration" approach which requires evaluation of the circumstances pertaining to each individual lot.

In making an f.o.b. sale, the shipper does not guarantee that the lot will still be completely within grade at time of arrival. Some increase in defects caused by progressive condition factors is to be expected in transit. If the shipper was holding himself responsible for the lot remaining within specified grade tolerances, he would sell on a delivered basis. Therefore, assuming normal transit conditions, a lot which is certified on arrival as "now fails to meet grade only on account of condition factors" does not mean that the lot necessarily fails to comply with an f.o.b. contract for such grade. The principle involved may be summarized by stating that an f.o.b. sale is similar to a delivered contract in certain respects. The seller is still responsible for delivering produce which is reasonably fit for the purpose for which it is intended even though the buyer pays the freight and assumes all risks of loss or damage in transit not caused by the seller.

Consideration was given by the industry group to the feasibility of establishing specific tolerances at time of delivery on the amount of damage caused by condition factors which would be acceptable to both shippers and receivers. If this were done, it would not be necessary to draw the line between "normal" and "abnormal" deterioration for each particular shipment in order to determine if good delivery has been made. It was agreed that if specific delivery tolerances were adopted they would have to be the same for all markets. It was also agreed that such standards should not allow any more decay or breakdown in an ungraded lot than one sold on the basis of a U. S. grade unless descriptive terms were used to indicate poorer merchandise (e.g., ordinary quality). If a shipper specified the percentage of damage by condition defects at time of sale, then the good delivery standard should permit a definite percentage increase in such factors at time of arrival in the market. Such a system would place a premium on complete and accurate descriptions of produce at the time of sale because the good delivery tolerance would vary accordingly, depending on the type and content of damage at time of loading. In order to adopt such a system, it would be necessary for shippers

and receivers to reach agreement on acceptability levels for progressive condition factors. Once such an agreement had been reached the USDA could publish the established tolerances for each commodity or groups of commodities so that they would be incorporated in the PACA regulations under "Trade Terms and Definitions." It would be possible to amend the definition of f.o.b. contracts in such a way to permit a gradual change-over to this system as good delivery standards for different commodities were developed.

Several industry representatives commented that the trade had been too slow in recognizing trends and in keeping grade standards and regulations in harmony with present marketing conditions. They also stated that more consideration should be given to the retail requirements because so much of the produce is now moving directly through to the consumer in pre-packaged form. It was concluded that the trade should be encouraged to work more closely with USDA in reviewing the standards and regulations with the view of doing a better job of keeping them up-to-date. It was also concluded that specific good delivery tolerances in lieu of suitable shipping condition in defining f.o.b. sales might have considerable merit and individual commodity groups concerned should determine if they wish to try to develop such standards. Representatives from lettuce and potato production areas indicated that they would like to explore the possibility of developing specific tolerances for their commodities and would discuss the matter further with their trade groups and associations. USDA representatives said they would be interested in working closely with any industry group who wanted to develop specific tolerances for good delivery and such groups should take the lead in reconciling differences of views which probably will develop between areas and between markets.

Other Trade Terms and Definitions. The industry group endorsed the USDA interpretation of the present definition of an f.o.b. contract, i.e., a shipper assumes no obligation for any deterioration in transit unless the destination of the shipment is specified in the contract. Rulings on this have been made constantly ever since PACA has been in effect, but the question has arisen more frequently in recent years because of increasingly heavy movement by trucks. Frequently, shippers who sell for truck movement are not informed concerning the destination of the load. Under such circumstances the shipper has no obligation for any deterioration in transit under the existing f.o.b. contract definition. It was agreed, however, that it would be desirable to revise the PACA regulations in order to make it crystal clear that this ruling applies.

Standard Application of Trade Terms. The industry conferees agreed that it would be desirable to revise the PACA regulations to make it clear that the trade terms and definitions whenever used have the specified standard meaning for all interstate transactions coming within the scope of the PAC Act. This, of course, is the basis for having a standard trade terms and definitions and USDA has always taken the view that they applied to all such transactions. However, the wording of the regulation is somewhat ambiguous in this respect and occasionally a question has arisen in a court case concerning the scope of the terms and definitions.

Inspections En Route. The industry group discussed in detail the increasing practice of stopping cars for inspection en route to their ultimate destination. A car on which refrigeration has been broken en route may become a distress car and many shippers regard such a practice as being unfair and prejudicial to their interest. USDA has always interpreted the definition of "acceptance" in the PACA regulations as including any act of diversion by the buyer. Since orders to a railroad to stop a car for inspection is technically a diversion order, this action constitutes acceptance and the buyer is not authorized to reject regardless of the condition of the merchandise upon inspection. The industry group heartily endorsed this interpretation whenever the shipper had not given his advance consent for performing inspections en route. Therefore, stoppage en route constitutes acceptance but does not bar recovery of damages for breach of contract if good delivery at the inspection point has not been made. It was also agreed that, if the buyer does not register a complaint at the inspection point, there would be only limited cases under which he would be justified in complaining of the condition of the goods at time of arrival at the ultimate destination. These would be limited to condition factors which could not be attributed to an inspection stopover. The reason for restricting the shipper's responsibility beyond the inspection point is that details usually cannot be developed concerning the opening of the car, how long it was open, what temperatures prevailed, how many containers were opened or handled, etc. The conferees agreed that, if a shipper agrees to stoppage en route for inspection and the car is stopped only for a reasonable time, then the shipper is fully responsible for the car arriving at the ultimate destination without abnormal deterioration. If the car is held beyond a reasonable time at the inspection point, then the buyer would not be authorized to reject regardless of condition on arrival at the ultimate destination and the shipper would be responsible only for those condition defects which clearly could not be attributed to the inspection stopover.

The industry conferees concurred in the USDA interpretation that diversion out of the line of haul for inspection constituted acceptance and the buyer was not authorized to reject the load. However, the buyer still may recover damages for breach of contract if the inspection shows that the goods were not in suitable shipping condition with the determination of allowable deterioration being based on the location of the diversion point in relation to the original destination. In other words, if the distance and running time to the inspection point significantly exceed those to the original destination, the shipper's responsibility for making good delivery no longer applies.

Status of Revised Regulations

The industry group endorsed the proposal that revised PACA regulations be issued at an early date in order to correct numerous deficiencies which exist. Many comments were received from the industry relating to the proposed revised regulations which were published in 1957. It will be necessary to redraft these proposed regulations and again issue them for

industry review and comment. The group suggested that certain industry members be designated as a working committee to help the Department develop proposed regulations, particularly in fields of specialized operations such as brokers. In discussing revised regulations, the group recommended that the interpretation relating to the designation of State of origin on containers be placed on the agenda for a future meeting. The use of the shipper's home office address or the designation of several States as part of the brand marking on a container is believed by some members of the trade to be a violation of the misbranding requirements of the PAC Act.

. Report on Action of June Conference Recommendations

Proposed Amendment to Raise \$500 Hearing Amount to \$1,500. The industry group recommended that the PAC Act be amended to raise from \$500 to \$1,500 the amount which must be involved in a complaint before the respondent must be granted an oral hearing at his place of business if he so requests. Several of the industry members stated that they had discussed this matter with others since the June conference and reported that the reactions were favorable toward the amendment. Its purpose is to obtain a more realistic dollar value standard and to avoid the additional time and expense which is caused by having to hold oral hearings on relatively small cases.

Review of Formal Procedures. USDA representatives reported that only limited action had been taken on this recommendation made at the June conference to determine if formal procedures could be speeded up. There is evidence that much of the delay in some formal cases is the result of the parties themselves delaying the action by failing to reply in time, asking for extensions of time, etc. Some of the extensions of time which have been granted by USDA have been so extreme that they appear to indicate dilatory tactics on the part of the parties involved. The question of whether USDA has been too lenient in granting extensions was discussed and there was general agreement that it would be desirable for USDA to adopt tighter requirements in this regard. It was agreed that if one of the parties does not comply with the established time schedules then the other party should be permitted to move for the issuance of an order based on the evidence at hand.

Study of Current Trade Practices as Related to Credit. No action has been taken by USDA on this matter to date.

Special Press Releases. USDA reported that it had issued 7 press releases since the June conference, summarizing the reparation orders which had been issued against licensees involving more than one unpaid order. (Heretofore a press release had been issued only concerning the first unpaid reparation order which resulted in the automatic suspension of a firm's license.)

In accordance with a recommendation made at the June conference, a press release was issued covering the 3 licenses which were issued under bond

since the conference. The name of the firm, its principals, and the amount of the bond were given in the release. It is planned that such information will continue to be made available through press releases each time a license with bond is approved. In addition to these 3 licenses, USDA reported that 15 applications for license had been denied since the June conference because the applicants had been discharged in bankruptcy within the last 3 years but did not furnish the required bonds.

Misbranding. USDA reported that it has continued to give increased attention to enforcement of the misbranding provisions of the Act. Starting in September 1958 most of its efforts had been concentrated on making terminal market misbranding checks. Produce branded by grade or by State of origin has been checked in about 130 cities as it arrives in the wholesale markets, at repacker's plants, or in retailer warehouses. Hundreds of inspections have been made and numerous misbranding violations were detected. In each case the receiver corrected the misbranding either by obliterating the incorrect markings or by regrading the product. In each case the shipper was warned of the misbranding violation and in most instances he was charged the cost of correcting the violation which the receiver incurred. In some instances, the shipment was rejected after the misbranding violation indicated that the lot did not meet the grade requirements of the contract even though the violation was corrected. USDA reported that the terminal market spot checks are being well received and that apparently the activity is becoming rather widely known in the different shipping areas.

Publicizing PACA Requirements and USDA Procedures. USDA reported that seven trade meetings and/or PACA clinics had been held since the June conference with others scheduled for the near future. These meetings have been sponsored by trade associations and have been well attended. Most of them have been with shipping point groups and the conferees discussed methods of developing greater interest on the part of terminal operators in arranging for PACA trade meetings. The conferees complimented the United Fresh Fruit and Vegetable Association for carrying a regular PACA column in its weekly publication. It was agreed that the educational activities and exchange of information between the Department and the industry should be carried forward as a continuing program. USDA representatives stated that its activities during the past year have constituted a full agenda for its available personnel, but it would continue to participate in these programs to the fullest extent possible.

Conclusions

It was concluded that a report on the conference should be prepared and that it should be made available, on request, to all interested members of the industry. Also, it was concluded that some of the highlights of both the June 1958 and January 1959 conferences should be made available to the industry by appropriate press releases to the trade papers. The

industry group recommended that USDA reduce the proposed changes in the Act to proper language and submit them to the established trade associations for discussion and action. Similar action should be taken on revised regulations. The group also recommended that another conference be held in the reasonably near future and expressed the opinion that periodic conferences would be highly desirable.

* * * * *

April 26, 1960

TO INDUSTRY PACA CONFEREES:

There is attached a copy of the report on the PACA Conference held in Chicago on January 29-30, 1960.

It is not our intention to give the attached report general distribution or to publish it. On the other hand, in accordance with the view expressed by the conferees, the report is not intended to be restricted for use of the conferees only. It will be made available, on request, to any interested party in the industry.

All recipients of this report should recognize that it does not necessarily reflect the final views of the industry or governmental conferees because it has not been possible to give full and complete consideration to each of the subjects discussed.



S. R. Smith, Director
Fruit and Vegetable Division

Attachment

Report on Conference Proceedings on PACA
January 29-30, 1960, Chicago, Illinois

A third conference with fruit and vegetable industry leaders and USDA representatives was held on January 29-30, 1960, to review the objectives and administration of the PACA. The conference had three main purposes. The first was to review and discuss progress and developments during 1959. The second purpose was to review a legislative draft of amendments to the PAC Act in line with recommendations made by the industry conferees at the Dallas meeting in January 1959. The third purpose was to review and discuss the proposed revised PACA regulations.

Mr. S. R. Smith, Director, Fruit and Vegetable Division, AMS, and Mr. F. R. Wilcox, General Manager, Sunkist Growers, again served as co-chairmen of the conference. There is attached a list of the industry representatives who attended the conference.

Review of 1959 Progress and Developments

Department representatives outlined the following matters in reviewing the 1959 PACA operations:

1. Changes made in the PACA Rules of Practice designed to expedite the handling of formal complaints. The procedure in default cases has been simplified and shortened. Additional changes under consideration were discussed and will be proposed for formal adoption at a later date.
2. The help and cooperation received from the large buyers (chain stores) on the revision of U. S. Grade Standards for various commodities and their contribution in commenting on the revised PACA regulations. It was pointed out that a number of these firms had requested and had been sent copies of the reports on the two preceding PACA conferences.
3. The development and reaction to the series of articles on "Doing Business the PACA Way", which was published in The Packer and recently issued as a USDA informational bulletin.
4. Discussion of the bulletin "What Retailers Should Know About Being Licensed under the PAC Act."
5. Review of 1959 disciplinary and misbranding actions under PACA.
6. Review of 1959 trade meetings and clinics held on PACA.

The industry conferees reacted favorably to the bulletins "Doing Business the PACA Way" and "What Retailers Should Know About Being Licensed under the PAC Act." They urged that all trade associations be informed of these bulletins and that their distribution be encouraged as widely as possible. The importance of continuing to hold PACA clinics and discussion meetings was stressed by the conferees. They requested that

more clinics be held in terminal markets. Department representatives requested the assistance of the organized trade groups in arranging for such meetings.

The industry conferees again expressed their interest in providing maximum assistance in acquainting independent retailers with the provisions and requirements of the PAC Act. They inquired concerning any new developments during 1959 with regard to the participation of retailer associations in carrying out this objective. Some of the conferees expressed the view that potential liability for accrued license fees extending back for many years might deter retailers from applying for license. They inquired concerning the possibility of placing some limitation on the charges for past-due fees in those instances where failure to obtain a license has been due solely to lack of knowledge of the requirements of the PAC Act. Department representatives stated that their primary interest was in having all firms licensed which are currently subject to the PAC Act. Also, they reviewed the provisions of the Act relating to the payment of accrued fees and pointed out their lack of authority to waive this statutory requirement.

(Since the Chicago conference, some retailer associations have distributed copies of the retailer bulletin to all their members, have discussed PACA requirements at their meetings, and have included information on the subject in their house organs. Department officials are hopeful that other associations will take a comparable interest and, through this means, that individual retailers will obtain a better understanding of their rights and responsibilities under the PAC Act.

Certain conclusions by Department officials concerning the determination of accrued fees for past-due licenses have been reached since the Chicago conference. The question of when a retailer first became subject to license would require the maintenance of records for past years showing the quantity purchased each day. This type of record is necessary because retailers do not become subject to license until they purchase one ton or more of fruits and vegetables on at least 21 days during a calendar year. PACA regulations require that all persons subject to license shall preserve for a period of 2 years the accounts and records required by the Act. Therefore, if failure to apply for a license is due to inadvertence and and if the applicant is not certain when his operations reached the level which would require him to obtain a PACA license, the Department will consider payment of \$50.00 in accrued fees to cover the past 2 years of operations as constituting satisfactory settlement of his liability. In this event, the applicant is advised to submit a total payment of \$75.00 with his application and to insert the words "at least 2 years" in answering the question on the application as to what date he first became subject to the Act.)

There was more discussion by the industry conferees concerning misbranding of produce than on any other subject connected with 1959 PACA operations. In answer to questions, USDA representatives advised that most of the

misbranding was found to be the result of shippers selling on U. S. grades without obtaining inspection. They also reported that, despite rumors of misbranding by repackers, very few such violations had been found. The principal misbranding topic related to the practice of marking the home office of the packer on the container when the particular shipment in fact originated in a different State. An illustration was given of California lettuce shippers who have all of their cartons marked with their California main office address but who also grow and ship lettuce from other States. It was explained to the industry conferees that such a practice was not considered to "misrepresent the State of origin" under the provisions of the PAC Act. It was explained that the PAC Act does not contain any positive requirements relating to the designation of the State of origin but simply prohibits misrepresentation if the State of origin is designated by the seller. Other Federal statutes require that the name and address of the packer be placed on the container and use of the home address is not construed as being misrepresentation under these statutes. The conferees discussed the desirability of an amendment in the PAC Act either (1) to prohibit the use of the home address when it differs from the State of origin or (2) to insert a positive requirement that the State of origin must be designated on the container. The industry conferees recommended that this topic be included on the agenda of a future meeting.

One of the industry representatives brought up the subject of grade labeling of produce without Federal or Federal-State inspection to assure compliance with the grade designated on the container. Department representatives pointed out that they had no authority to require official inspection as a prerequisite to the use of official grade marks on fresh fruits and vegetables. They pointed out that any packer can make use of these grade marks and he does not violate any Federal statute as long as the product meets the designated grade. Fresh fruits and vegetables are the only major food product where inspection is not required before official grade marks can be used. Official inspection is required as a prerequisite for using official grade marks on processed fruit and vegetables, meat, eggs, poultry, and most other food products. It was pointed out to the industry representatives that a number of States require that certain fruits and vegetables be labeled with a U. S. or State grade, but only three States require inspection to determine compliance with the grade designated. Of course, a number of production areas operate under Federal or State marketing orders which require inspection of the fresh fruits or vegetables involved as part of the marketing regulations which are in effect.

The Department representatives said that the pros and cons of requiring inspection whenever U. S. grade marks are used have been reviewed particularly with attention to potatoes. Legislative hearings have been held on certain proposals in this regard. The industry conferees inquired concerning the possibility of seeking legislation to provide that fresh fruits and vegetables bearing U. S. grade marks which had not been officially inspected would have to be stamped "NOT GOVERNMENT INSPECTED." There are about 19 States which require U. S. grade markings on the containers of certain fruits and vegetables. This system would not cut

across the application of these State laws and inspection would still be optional in these States as long as the designation "NOT GOVERNMENT INSPECTED" was placed on the containers. The conferees expressed an interest in giving further consideration to this subject at a future meeting. Department representatives agreed to prepare a summary of the views and statements which had been made in the past concerning grade labeling and inspection requirements on potatoes for the information of the conferees.

Review of Legislative Draft of Amendments to the PAC Act

The legislative draft needed to carry out the amendments to the PAC Act in accordance with the recommendations made at the January 1959 conference in Dallas was reviewed and discussed. The conferees endorsed the legislative draft and recommended that steps be taken to obtain the support of trade associations and other industry groups in supporting this legislation. There is attached a copy of a draft bill of amendments to the PAC Act and a brief explanatory statement setting forth the purpose of these amendments. Further details on the background and discussions on this subject are given in the report on the January 1959 PACA conference.

Review and Discussion of the Proposed Revised PACA Regulations

Discussion of the proposed revised PACA regulations took up most of the time at the conference. It was understood by the industry representatives that these discussions were not for the purpose of arriving at final decisions as to the content of the regulations but their comments and suggestions were being sought in the same manner as they were from all interested parties in the industry. Department representatives stated that the final regulations would be prepared after the period for receiving industry comments had expired on March 31, 1960.

The proposed regulations were reviewed section by section. Most of the comments consisted of suggestions for clarifying the technical language of some of the provisions. Department representatives stated that it was their objective to publish the final regulations not later than July 1, 1960.

Some of the major points on which comments were made were as follows:

The industry conferees recommended that non-working hours be clarified in the definition of "reasonable time" setting limits for acceptance or rejection of lots. They stated that, although their warehouses may be open 24 hours a day, during some of these hours there is no responsible person on the job who knows the provisions of the contract or who has authority to reject the shipment. It was pointed out that the act of unloading a truck or car constitutes acceptance even if no responsible person was present when this was done. Once a lot has been accepted, the receiver cannot later reject it but his

legal remedy would then be to recover damages from the seller if the goods did not meet the provisions of the contract.

X
The industry representatives recommended that the definition "full payment promptly" of 5 to 10 days, dependent upon the different types of transactions, be clarified to indicate that payment in a shorter time was desirable and in line with good business practices. Department representatives explained that the exact words "full payment promptly" had to be used in the regulations because these were the same words set forth in the Act. It applies only in the absence of a specific agreement between the parties as to time of payment and its purpose is to establish a definite time when a violation of the Act has occurred because of failure to pay in accordance with the provisions of the law. It was agreed that the revised regulations should clarify the significance and meaning of this definition.

The industry representatives unanimously favored the requirement that written confirmations be issued by all brokers. They recognized that some brokers have not been following this practice but believed that a broker cannot reasonably fulfill his specified duties unless he issues written confirmations in all instances.

There was extensive discussion of the proposed requirement which would prohibit charging or receiving a commission or brokerage fee whenever a person purchases or sells produce for his own account. Also, the proposed regulations would prohibit such fees whenever the person is subject to the direct or indirect control of any party to the transaction other than his principal or where the other party is subject to the person's direct or indirect control. One purpose of these proposed requirements is to bring the PACA regulations in line with the provisions of the Robinson-Patman Act. Industry representatives indicated that captive firms or other interlocking arrangements were becoming more common in the produce business. They expressed the view that commission or brokerage fees involving transactions between such firms constituted unethical and illegal competition for regular brokers and commission merchants. There was an extensive discussion of anticipated problems and issues which would arise in the interpretation and enforcement of this limitation. It was concluded that these points should be carefully considered in determining how best to handle this matter under PACA regulations.

The question was raised whether the proposed regulations would extend the scope of the PAC Act in regard to the relationships between growers and shippers. It was pointed out that the coverage of the Act would not be changed in any

respect by the proposed regulations. The duties and responsibilities of shippers to growers are spelled out in more detail in the proposed regulations in order to set forth these requirements more clearly. A grower has always been authorized to file a complaint under the Act against his shipper or agent if he has suffered damages because of a breach of contract.

Discussion of Future Meetings

The industry representatives recommended that the PACA conference group continue to hold future meetings to review and discuss the objectives and operations of the PAC Act. They further recommended that representatives of retailers be requested to attend future conferences. It was their thought that such participation on the part of retailers would be helpful in discussing mutual problems and arriving at possible solutions.

The conference was closed with an expression of appreciation by the Government Co-chairman for the contribution of time, effort, and advice received from the industry members and the statement that much of the progress to date in meeting industry problems was the result of the excellent cooperation the Department has received from them.

Attachments

List of Industry Representatives in Attendance at the
PACA Conference, Chicago, Illinois, January 29-30, 1960

Robert L. Berner	Robert L. Berner Company	Chicago, Illinois
A. W. Bodine	Bodine Produce Company	Phoenix, Arizona
Lehm L. Brown	Wells & Wade Fruit Co.	Wenatchee, Wash.
Harold M. Buzek	Flatow, Riley & Company	Cincinnati, Ohio
Peter Cancelmo	John B. Cancelmo Co.	Philadelphia, Pa.
J. Abney Cox	H. L. Cox & Son	Princeton, Fla.
Stephen A. D'Arrigo, Jr.	D'Arrigo Bros. Co. of N.Y.	New York, N. Y.
M. J. Davis	California Fruit Exchange	Sacramento, Calif.
Perrin Edmunds	C. A. Powers & Company	Fort Fairfield, Me.
R. D. Erwin	Ben E. Keith Company	Fort Worth, Texas
Ralph C. Lally	Brennan Pre-Pared Potato Co.	New Orleans, La.
S. B. McCubbins	McCubbins Brokerage Co.	Oklahoma City, Okla.
J. F. MacNulty	J. F. MacNulty, Inc.	Albany, New York
Henry W. Miller	Consolidated Orchard Co.	Paw Paw, West Va.
A. C. O'Donnell	O'Donnell Fruit Co. of Pittsburgh	Pittsburgh, Pa.
R. V. Phillips	Haines City Citrus Growers Assn.	Haines City, Fla.
E. J. Raffetto	K. R. Nutting Company	Salinas, Calif.
Merlin Schatz	M. E. Carter & Company	Memphis, Tenn.
F. R. Wilcox	Sunkist Growers	Los Angeles, Calif.
Fred W. Burrows	International Apple Assn.	Washington, D. C.
T. C. Curry		DeBary, Florida
A. E. Mercker	National Potato Council	Washington, D. C.
Alan T. Rains	United Fresh Fruit and Vegetable Association	Washington, D. C.

PACA CONFERENCE PROCEEDINGS
Chicago, Illinois
January 29-30, 1960

Explanatory Statement on Proposed Amendments to the
Perishable Agricultural Commodities Act of 1930

The major purposes of the proposed amendments to the Perishable Agricultural Commodities Act are to (1) improve and clarify the provisions for relicensing or employment of persons who have violated the Act, (2) provide that an oral hearing need not be held when the amount claimed as damages in a reparation complaint does not exceed the sum of \$1,500, and (3) provide authority for the Secretary of Agriculture to obtain from PACA licensees such reports or other information as the Secretary deems necessary in administration of the Act.

Relicensing and Employment

The proposed amendments establish a clear-cut basis for relicensing or employing individuals who have lost their license or who have otherwise violated the Act. The matter of relicensing or employment is important because most persons whose licenses are suspended or revoked are limited by training or experience to the fruit and vegetable business in seeking gainful employment. Such persons should not be kept out of the fruit and vegetable business indefinitely but, on the other hand, reasonable penalties must be provided if the Act is to be effective. It should be noted that the PAC Act is not a criminal statute and the only penalty which can be imposed against a licensee is the economic sanction of controlling a person's right to do business on his own or as an employee, officer, or partner of a licensee.

The provisions of the PAC Act pertaining to licensing and employment, as now written, are ambiguous and inconsistent. For example, the minimum debarment periods following violation of the Act presently range from one year to forever. The nature of the offenses does not justify this great disparity. Although a license may be revoked only in the case of flagrant or repeated violations, the minimum debarment period following revocation is one year, while it is two years for failure to pay a reparation order. Also, the authority for requiring the posting of surety bonds by a violator who is relicensed is not uniform or consistent for the different types and combinations of violations.

The proposed amendments would establish the following time periods and bonding requirements for relicensing and employment:/1

Type of Violation	:Relicenee	:Employment
1. Flagrant Violation or Revocation <u>/2</u>		
(a) Waiting period with bond	2 years	1 year
(b) Waiting period without bond	3 years	2 years
(c) Length of bond <u>/4</u>	4 years	4 years
2. Unpaid Reparation Order <u>/3</u>		
(a) Waiting period with bond	2 years	None
(b) Waiting period without bond	3 years	2 years
(c) Length of bond <u>/4</u>	4 years	4 years

- /1. These are minimum time periods and the Secretary could refuse to issue a license or refuse to approve employment for a longer period if he finds that the past violations were of a nature to warrant such action.
- /2. This includes revocation of an existing license and flagrant or repeated violations which would have resulted in revocation if a licensee had been in effect.
- /3. If a licensee pays the reparation order, he is automatically reinstated. If a licensee is discharged in bankruptcy, he may be relicensed immediately upon posting a bond.
- /4. Length of bond refers to the number of years it remains in effect after date of relicensing or employment.

It is necessary to rewrite entirely the sections concerning licensing and employment in order to incorporate the provisions given above. Requiring a bond for employment by another licensee is necessary in order to guard against dummy or figurehead arrangements. This still permits legitimate employment by financially responsible firms. "Employment" has been re-defined to cover all types of positions because experience has shown that it is not possible to prove that a person holds a "responsible" position if his employer and he want to hide their working arrangement. Provision is made for automatic termination of a license upon bankruptcy. Presently, a bankrupt applicant is required to post a surety bond whereas a bankrupt with an existing license can continue in business simply by paying his annual license fee, since the bankruptcy action does not affect his license status. There are a number of related or clarifying changes so that the application of penalties or requirements is consistent and reasonable for all the different types and combinations of violations.

Give Opportunity for a Hearing if Damages Claimed Exceed \$1,500

The PAC Act presently provides that, at the request of the respondent, an oral hearing must be held at the respondent's place of business whenever the damages claimed exceed the sum of \$500. Otherwise a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied by depositions or verified statements of fact. The sum of \$500, which has not been changed since the Act was adopted in 1930, no longer justifies the time and expense of participating in an oral hearing. Also, it would expedite the handling of formal complaints if shortened procedure was authorized up to the sum of \$1,500 which represents 55 percent of the cases on which oral hearings have been held during the past four years. The sum of \$500 represented about the average value of a carload of fresh fruits and vegetables in 1930. The average value today is nearer \$2,000 per carload. Some respondents make the practice of requesting a hearing in disputes involving a small sum of money in order to deter the complainant from proceeding because of the costs. The proposed amendment does not preclude the Secretary of Agriculture from granting an oral hearing involving a sum less than \$1,500 whenever he concludes that a hearing is desirable in order to develop the evidence satisfactorily.

Add a General Reports Provision to the PAC Act

Most regulatory laws give the administrative agency authority to require the submission of reports or other information. The Packers and Stockyards Act, Agricultural Marketing Agreement Act, Commodity Exchange Act, and Federal Trade Commission Act are examples.

A general reports provision in the PAC Act would contribute significantly toward its effective administration. Information concerning the volume of business, trade names, and other factors will be needed in order to administer the amended provisions relating to licensing and employment. Changes in trade practices could be appraised and analyzed. Regulations and trade terms could be better fitted to meet the needs of the industry if based on selective pertinent reports. Certain buying and selling practices could be readily ascertained without having to resort to an investigation of books and records of licensees, which is authorized under the present statute.

Miscellaneous Amendments

It is proposed that PACA funds should not be used for the administration of the Export Apple and Pear Act. This Act establishes minimum standards for export and has no connection with the PAC Act. Administration of the PAC Act is financed from the annual fees paid by licensees and this fund should not be used for carrying out non-related activities.

PACA CONFERENCE PROCEEDINGS
Chicago, Illinois
January 29-30, 1960

A BILL

To Amend the Provisions of the Perishable Agricultural
Commodities Act, 1930, Relating to Practices in the
Marketing of Perishable Agricultural Commodities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. § 499a), is amended by adding at the end thereof the following new subsections:

- "(9) Any person affiliated or connected with a commission merchant, dealer, or broker as (1) owner, (2) partner in a partnership, (3) officer, director, or holder of more than 10 percent of the outstanding stock of a corporation or association, shall be considered 'responsibly connected' with such commission merchant, dealer, or broker;
- "(10) The terms 'employ' and 'employment' mean any affiliation of an individual with the business operations of a licensee, with or without compensation, including ownership or self-employment."

Sec. 2. The third sentence of section 3(b) of such Act (7 U.S.C. § 499c(b)) is amended to read as follows: "Upon the filing of the application, and annually thereafter, the applicant shall pay a fee not to exceed \$25 which shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the 'Perishable Agricultural Commodities Act fund', which shall be available for all expenses necessary to the administration of the Act, and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497): Provided, That financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually."

Sec. 3. Section 3 of such Act (7 U.S.C. § 499c) is further amended by adding at the end thereof the following new subsection:

- "(c) A licensee may conduct business in more than one trade name or change the name in which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in the opinion of the Secretary, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after

notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant."

Sec. 4. Section 4(a) of such Act (7 U.S.C. § 499d(a)) is amended by inserting before the period at the end thereof ": Provided further, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt."

Sec. 5. Section 4(b) of such Act (7 U.S.C. § 499d(b)) is amended to read as follows:

- "(b) The Secretary shall refuse to issue a license to an applicant if he finds that the applicant or any person responsibly connected with the applicant was responsibly connected with any person -
- (1) whose license was revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension; or
 - (2) who has been found after notice and hearing to have committed any flagrant or repeated violation of section 2 within two years prior to the date of the application: Provided, That this shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or
 - (3) who, within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Produce Agency Act (7 U.S.C. secs. 491-497); or
 - (4) who has failed except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application."

Sec. 6. Section 4(c) of such Act (7 U.S.C. § 499d(c)) is amended to read as follows:

"(c) At the expiration of the two-year period specified in paragraph (b) of this section, the Secretary may issue a license to such applicant if the applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with the Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c): Provided, That if such applicant does not furnish such a surety bond the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal: Provided further, That if the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically cancelled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided."

Sec. 7. Section 6 of such Act (7 U.S.C. § 499f) is amended by striking out "\$500" each place it appears and inserting in lieu thereof "\$1,500."

Sec. 8. Section 8(b) of such Act (7 U.S.C. § 499h(b)) is amended to read as follows:

"(b) Except with the approval of the Secretary, no licensee shall employ any person who was responsibly connected with any person -

- (1) whose license has been revoked or is currently suspended by order of the Secretary;
- (2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

- (3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with the Act and that it will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval: Provided, That the Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section."

Sec. 9. Section 13 of such Act (7 U.S.C. § 499m) is amended by adding at the end thereof the following new subsection:

- "(g) Every commission merchant, dealer, or broker shall from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to carry out the provisions of this Act. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this section or for the purpose of obtaining the information required in any report, where it has been requested and not furnished, the Secretary is authorized to examine such accounts, records, and memoranda which he deems relevant. Whenever the Secretary determines, after notice and opportunity for a hearing, that any commission merchant, dealer, or

broker has failed to furnish complete, accurate, or timely reports, pursuant to this section, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days."

United States Department of Agriculture
Agricultural Marketing Service
Washington, D. C.

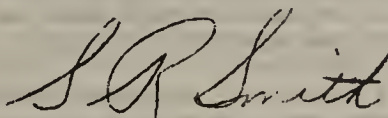
April 24, 1961

To: Fresh Fruit and Vegetable Industry
Conference Group

There is attached a copy of the report on the USDA-Industry Conference on improved trade practices for fresh fruits and vegetables held in New Orleans on January 20, 1961.

This report does not necessarily reflect the final views of the industry or government conferees on each of the subjects discussed.

Copies of the report will be made available, on request, to any interested party in the industry.

A handwritten signature in dark ink, appearing to read "S. R. Smith". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

S. R. Smith, Director
Fruit and Vegetable Division

Attachments

Report of USDA-Industry Conference on Improved Trade
Practices for Fresh Fruits and Vegetables
New Orleans, Louisiana
January 20, 1961

The fourth annual conference of fresh fruit and vegetable industry leaders and USDA representatives was held on January 20, 1961. The purpose of this conference was to discuss the matter of improved trading practices in fresh fruits and vegetables. Therefore, the scope of the conference was broadened from the earlier ones to include, in addition to the operation of the Perishable Agricultural Commodities Act, U. S. grade standards and inspection, and related industry-government matters.

Mr. S. R. Smith, Director of the Fruit and Vegetable Division, AMS, Mr. S. T. Shaw, Vice President of Safeway Stores, Inc., and Mr. F. R. Wilcox, General Manager of Sunkist Growers, served as Co-Chairmen of the conference.

The industry conference group was expanded to include retailer representatives in addition to the shippers, carlot receivers, and brokers who participated in the preceding conferences. Unfortunately, the heavy snowstorms in the midwestern and eastern parts of the country on January 19 and 20 disrupted transportation schedules so that several of the conferees were absent for all or a portion of the conference. There is attached a list of the industry representatives who attended the conference.

Review of 1960 PACA Developments

The discussions on this subject centered largely around the revised PACA regulations which became effective on August 1, 1960. These regulations do not apply to transactions which occurred prior to that date, and at the time of the conference only a few such complaints had been received. Until more experience is obtained in the application to actual cases, no appraisal of the regulations could be made. However, Department representatives reported that the revised regulations have been well received by the industry and they represent a significant accomplishment of the conference group. There are no immediate plans for further changes in the regulations until the Act is amended, which will necessitate some changes. Department representatives pointed out the desirability of developing supplemental regulations which would be more specifically adapted to the frozen fruit and vegetable industry.

Most of the reactions to the revised regulations reported by the industry conferees were connected with the requirement that brokers issue written confirmations or memorandums of sale. Several of the representatives stated that, in their opinion, the majority of the brokers were complying with the regulations. Evidently, there is some variation between areas with shipping point brokers still constituting the main problem in this regard. It was reported that some shippers have been dissatisfied with the vague or indefinite terminology used by some brokers at shipping point in describing the grade, quality, and other terms of the contract

in their memorandum of sale. There has also been some difficulty in having the brokers specify definite destinations for the shipments, since some of the buyers would prefer to have the "suitable shipping condition" warranty carry to any destination in the U. S. Some shippers have been rejecting such contracts, but apparently others have not been insisting that brokers issue adequate confirmations or memorandums of sale. USDA representatives urged that all parties to the contract promptly examine the memorandums of sale and object to the broker when the terms are not clearly and properly stated. It was pointed out that the regulations require brokers to issue confirmations "setting forth all the essential details of the agreement between the parties."

Industry representatives observed that the current investigations and citations by the Federal Trade Commission with respect to the payment or collection of illegal brokerages has encouraged compliance by brokers with the PACA regulations. They pointed out that, if a broker issues a written confirmation to both the seller and the buyer, all parties concerned then have prima facie evidence in their files that the broker was acting in his proper capacity under the FTC laws and was entitled to receive a brokerage fee from one of the parties.

An industry representative suggested that it would be desirable if the USDA could prepare a draft of a smaller form of a Memorandum of Sale for use of shipping point buying brokers. The standard form is too large and a "pocket size" form would be more convenient to carry. The USDA will endeavor to prepare such a form for use in the industry.

Retailer representatives stated that their firms require the issuance of a memorandum of sale by their buyers so that both parties will have evidence in writing regarding the terms of the sale. The question was then raised as to what could be done to have a good contract record on sales between shippers and buyers if the buyer does not issue a written sales agreement. (The PAC Act has not been interpreted to authorize the Department to make it mandatory that buyers issue written memorandums of sale and, therefore, the regulations in this regard apply only to brokers.) In answer to the questions, USDA representatives stated that their only recommendation was the usual one that the shipper should promptly confirm by wire or letter to the buyer the terms of sale agreed to verbally, in person, or over the telephone. The written confirmation should contain all of the essential points covered by the oral agreement. Such confirmation to the buyer is not conclusive evidence that the buyer has agreed to these terms but, in the absence of a prompt reply to the contrary, it would probably be considered as sufficient evidence to establish that the contract was made on the terms stated in the wire.

The question was raised by industry representatives as to what action the Department intends to take to encourage or to force brokers to issue written confirmations or memorandums of sale in all instances. USDA representatives replied that, in accordance with the investigatory procedure outlined in the proceedings of prior conferences with the industry

group, it was not their present intention to initiate independent investigations to determine compliance with this provision of the regulations. USDA is reviewing each reparation complaint on transactions after August 1, 1960, involving a broker to ascertain if written confirmations have been issued covering such transactions. As violations are detected following this procedure, warning letters will be issued to violating brokers with the notice that a check will be made at a future date to determine if they currently are complying with the regulations. Disciplinary action will be taken if there are instances of persistent or repeated violations after the broker has been duly warned and notified. This procedure is similar to the one followed regarding inadequate records of commission merchants, which is outlined on page 10 of the conference proceedings covering the June 27-28, 1958, conference in Washington, D. C. Relatively few complaints had been received at the time of the conference involving transactions on or after August 1, 1960.

The subject of future PACA clinics and trade meetings in production areas and terminal markets was discussed by the group. It was suggested that the Department notify the various trade associations and organizations that its personnel would be available for such meetings and to encourage them to make the necessary arrangements. Retailer representatives inquired concerning the possibility of smaller meetings with buyers, warehousemen, and supervisory personnel within the same organization. They were assured that the Department desired to cooperate with all industry groups and to the maximum extent possible would participate in any such meetings which retail organizations arranged.

The next subject discussed was the proposed amendments to the PAC Act which were incorporated in a bill introduced by Senator Holland of Florida in the 86th Congress. The Government Co-Chairman gave a background statement explaining how these amendments to the Act were developed. He outlined the fact that this bill was the direct outgrowth of the 1958, 1959, and 1960 USDA-Industry conferences. Based on the industry representatives' recommendations made at the 1958 and 1959 conferences, a bill was drafted which was considered at the 1960 conference in Chicago. Following certain changes and approval by the conferees, the bill was introduced on June 30, 1960, by Senator Holland at the request of the United Fresh Fruit and Vegetable Association and the Florida Fruit and Vegetable Association. It was recognized by these sponsors that action on the bill was unlikely at that session of Congress but it was their desire to obtain an official bill which could be circulated within the industry and on which an official USDA position could be obtained.

The Department filed a report with the Senate Committee on Agriculture in 1960 approving the bill but recommending three additional changes. One was a substantive change having to do with increasing the maximum annual license fee from the present \$25 amount. The other two were technical corrections. Senator Holland, before reintroducing the bill in the 87th Congress, requested that the Department recommendations be taken up with the industry conference group to see if a "clean" bill could be agreed upon

which he could then introduce.

The industry representatives had no questions concerning the technical corrections which had been made either by the Senate Staff or by the Department and they approved these changes. There was considerable discussion concerning the annual license fee and the reporting provision of the bill. With continued increases in costs of personnel, equipment, transportation, communication, etc., the present \$25 annual fee is inadequate to meet the costs of administering the law. Therefore, it has been necessary to draw on the PACA reserve fund which has been built up over a period of years and, at the current level of costs and receipts, this fund will be completely depleted sometime in 1962. The conferees considered three alternative approaches to providing for increased fees. It was their conclusion that the most desirable approach would be to increase the maximum fee to \$50 per year, with the provision that the Secretary shall give public notice and an opportunity for interested persons to file views and objections prior to the effective date of any increase. It was recognized by the conferees that the current operating costs would necessitate an increase in the fee of about \$10 per license but it was their view that the maximum should be set at \$50 in order to make adequate provision for possible increases in operating costs which may occur in the future.

The majority of the industry representatives recommended that the reporting provision be deleted from the bill. It was their view that virtually all of the essential information needed by USDA for the effective administration of the Act could be obtained through the voluntary cooperation of the industry and through the authority for examining books and records now contained in the Act. However, it was their further conclusion that the matter should be kept under continuing appraisal by the industry conference group.

The conferees again discussed many of the points which have been previously considered at the prior conferences which led to their earlier endorsement of this reporting provision. Several observed, however, that the situation with regard to "unjustified rejections" which was the principal reason for this proposal had improved considerably during the past couple of years. Also, some of the conferees referred to "mail order investigations" which conceivably could be adopted on a large scale under the proposed reporting provision. In view of these circumstances and not wishing to jeopardize support for the bill, which contains many other highly desirable features, the conferees reached the conclusion as set forth above that this feature of the proposed amendment should be shelved at this time.

(Following the conference, the United Fresh Fruit and Vegetables Association adopted a resolution endorsing the proposed revised bill and urging that it be passed. The revised bill was then presented to members of the Senate and House Committees on Agriculture by industry representatives and identical bills are now pending in the 87th Congress, which are S. 1037 introduced by Senator Holland of Florida and H.R. 5023 introduced by

Congressman McIntire of Maine. These bills contain all of the provisions and features which were approved at the New Orleans conference.)

Discussion of U. S. Grade Standards and Inspection

The attached set of six tables formed the basis for discussing the merits and shortcomings of U. S. grade standards and the government inspection service. The data given in these tables show a significant difference in the use of U. S. grades and inspection. Conferees analyzed and discussed various reasons which might account for these differences and suggested certain improvements or actions which might make the U. S. grades and inspection service more useful.

There was general agreement that the volume of inspection at shipping point was an indication of the usefulness of the U. S. grades and inspection service but, on the other hand, the volume of market inspections could not be used for this purpose. Most purchases are made on an f.o.b. basis and, therefore, the volume of inspection at shipping point provides an indication of the relative use of the U. S. grades. Market inspections are primarily an indication of trouble shipments and, as expressed by a chain store representative, having no market inspection by USDA meant that they were having little or no trouble. Conversely, since market inspection certificates are used to settle disputes, then a large number of inspections means that they are having a large number of disputes.

Both shippers and receivers expressed dissatisfaction with the present U.S. grades for certain commodities. Apples and lettuce were particularly singled out in this regard. A chain store representative said that his firm depended largely on their buyer's observations on the quality of the produce rather than on the U. S. grades. A shipper pointed out that there were variations between and within different chains as to what would or would not be accepted. It was acknowledged that some chain store warehousemen were more technical and harder to please than others.

There was considerable discussion of ways and means of obtaining constructive suggestions and criticisms from the industry on proposals for revising U. S. grades. Department representatives emphasized that generalized comments were not very helpful. The Department's present procedure for circularizing the industry for comments was outlined. This consists primarily of furnishing copies of printed material for distribution to all trade associations and making as many personal contacts as possible with members of the trade both at shipping point and in the terminal market. Certain associations and trade groups have been very helpful in this regard while others have displayed little interest. It was suggested by an industry representative that a better job could be done if the Department would prepare a list of specific questions which it would like to have answered in order to evaluate a proposed grade revision. In this way the significant points or issues could be singled out by the industry members when they are reviewing proposed revisions. It was suggested that proposed grade standards, accompanied by such a list of questions, be sent to the United Fresh Fruit and Vegetable Association, National Association of Food

Chains, and other trade associations for distribution to their members. It was generally believed that this procedure should be adopted as one of the methods designed to obtain as much definite information as possible so that the views and needs of all segments of the industry could be considered in developing and amending U. S. grades. USDA representatives stated that they would follow this procedure whenever significant or multiple changes in a standard were being proposed.

The feasibility of having a small working group from the industry to review changes in U. S. grades was discussed. It was recommended that this approach should be followed whenever it appeared that it would make an effective contribution in arriving at final decisions on proposed grade changes. USDA representatives indicated that they would try this approach on some future revision of grade standards.

The conference group reviewed the "Statement on Inspection and U. S. Grade Labeling of Fresh Fruits and Vegetables", which was prepared in response to a request made at the January 1960 Conference. (Copies of this report are available upon request from the Fruit and Vegetable Division.) This statement outlines some of the pros and cons of requiring inspection whenever U. S. grade marks are used. Fresh fruits and vegetables are the only major food products on which inspection is not required before official U. S. grade marks can be used. The conferees decided not to make any recommendation at this time on this matter.

Conclusions

The Government Co-Chairman concluded the conference by thanking the industry representatives for the cooperation and assistance they had rendered the Department. He pointed out that the industry representation had been broadened at this meeting by inviting retailers to participate so that all major segments of the industry are now represented in the discussions. It was generally agreed that the expanded representation had significantly contributed to the effectiveness of the group and that continued conferences should be held to discuss mutual problems and to seek satisfactory solutions.

Attachments

Industry Conferees at USDA-Industry Conference
Roosevelt Hotel, New Orleans
January 20, 1961

Shippers

A. W. Bodine	Bodine Produce Company	Phoenix, Arizona
J. Abney Cox	H. L. Cox & Son	Princeton, Florida
M. J. Davis	California Fruit Exchange	Sacramento, Calif.
Perrin Edmunds	C. A. Powers & Company	Fort Fairfield, Me.
*J. S. McManus	J. S. McManus Produce Company	Weslaco, Texas
Henry W. Miller	Consolidated Orchard Company	Paw Paw, West Va.
R. V. Phillips	Haines City Citrus Growers Assn.,	Haines City, Fla.
*E. J. Raffetto	K. R. Nutting Company	Salinas, California
Paul W. Scea	H. S. Denison & Company	Wenatchee, Wash.
F. R. Wilcox	Sunkist Growers	Los Angeles, Calif.

Carlot Receivers

*Robert L. Berner	Robert L. Berner Company	Chicago, Illinois
*Peter Cancelmo	John B. Cancelmo Company	Philadelphia, Pa.
Stephen A. D'Arrigo, Jr.,	D'Arrigo Bros. Co. of N.Y., Inc.,	New York, N. Y.
R. D. Erwin	Ben E. Keith Company	Fort Worth, Texas
Ralph C. Lally	Brennan Pre-Pared Potato Co.	New Orleans, La.
Merlin Schatz	M. E. Carter & Company	Memphis, Tennessee

Brokers

*J. F. MacNulty	J. F. MacNulty, Inc.	Albany, New York
S. B. McCubbins	McCubbins Brokerage Company	Oklahoma City, Okla.

Retailers

*J. E. Davis	Winn-Dixie Stores, Inc.	Jacksonville, Fla.
M. A. Ellison	Super Valu Stores, Inc.	Hopkins, Minnesota
Peter Gunner	The Kroger Company	Cincinnati, Ohio
Ronald L. Hileman	Jewel Tea Company, Inc.	Melrose Park, Ill.
Malcolm J. Reid ✓	Reid Stores, Incorporated	Staunton, Virginia ✓
Seth T. Shaw	Safeway Stores, Inc.	Oakland, California
*Harry P. Wehman	The Great Atlantic & Pacific Tea Company	New York, N. Y.

Observers

J. E. Adams	Winn-Dixie Stores, Inc.	Jacksonville, Fla.
Guy Bear	Safeway Stores, Inc.	Oakland, California
Fred W. Burrows	International Apple Assn.	Washington, D. C.
*Kent Christensen	National Assn. of Food Chains	Washington, D. C.
T. C. Curry	Fruit and Vegetable Bureau of Service	DeBary, Florida
A. E. Mercker	National Potato Council	Washington, D. C.
Carl Miller	Jewel Tea Company, Inc.	Melrose Park, Ill.
Alan T. Rains	United Fresh Fruit and Vegetable Assn.	Washington, D. C.
Gordon N. Smith	United Fresh Fruit and Vegetable Assn.	Washington, D. C.

* Absent

Summary of Tables

Table 1 - Variations within Shippers' Brands of Apples, 1959-60 Season.

This table shows a significant difference in the amount of variation within 9 private brands of apples in terms of grade defects, decay, firmness, and color. All lots were Government inspected and were certified as meeting a designated State or Federal grade.

Table 2 - Number of Carlots and Percentage of Commercial Shipments Inspected on Voluntary Basis in Selected States during 1959.

This table shows the variation in the use of Government inspection by shippers in different production areas. The 4 selected commodities are indicative of the wide variations which apparently are caused by different marketing practices, different customs, variation in suitability of U. S. grades, or other reasons.

Table 3 - Variation Between Selected Commodities in Use of Inspection in Florida during 1959.

This table shows that, in the same production area with many of the same shippers, there is a wide variation between products in the use of Government inspection. Apparently, inspection in accordance with existing U. S. grades is of greater value to the shipper for marketing or quality control for some products than it is for others.

Table 4 - Fresh Fruit and Vegetable Inspections Performed in Terminal Markets, July 1, 1959-June 30, 1960.

This table shows separately the estimated percentage of wholesale market and chain store receipts inspected (either grade or condition) in 19 major markets. There is a wide variation between markets and between these two receiving groups in the use of inspection.

Table 5 - Government Inspection for Chain Stores in Selected Cities - 1959-60.

This table shows the number of carlot equivalents of 9 different products inspected in 15 major cities. Inspection of most products in most cities is evidently negligible in relation to the volume of direct chain store receipts.

Table 6 - Government Inspection for Certain Chain Stores in Selected Cities During One Month in 1960.

This table shows that there is as much variation between different warehouses operated by the same chain store as there is between different chain stores in their comparative use of inspection.

Table 1
Variations within Shippers' Brands of Apples
1959-60 Season

Item	Brand													
	A	B	C	D	E	F	G	H	I	J	K	L	M	N
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	percent of lots													
U. S. No. 1 Grade or Better														
Grade Defects														
0-4 percent	100	2	2	1	0	0	100	66	73	88				
5-10 percent	0	98	98	99	100	100	0	34	27	12				
Decay														
0 percent	100	35	79	72	81	99	100	100	100	92				
1/2 percent	0	52	21	28	19	1	0	0	0	7				
1 percent	0	13	0	0	0	0	0	0	0	1				
Firmness														
Hard	85	9	54	11	30	7	90	8	21	0				
Firm	14	9	31	55	38	26	6	67	42	37				
Firm Ripe	1	54	7	34	32	63	4	25	27	42				
Ripe	0	28	8	0	0	4	0	0	10	21				
Minimum Good Red Color														
25-49 percent	15	0	19	17	2	7	13	77	78	5				
50-74 percent	85	97	80	74	39	89	81	13	22	94				
75-100 percent	0	3	1	9	59	4	6	10	0	1				

/1. Through October 20. /2. After October 20.

Source: Compiled from Federal-State Inspection Certificates.

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Table 2

Number of Carlots and Percentage of Commercial
Shipments Inspected on Voluntary Basis
in Selected States during 1959

State	Carlots/ Inspected	Estimated Percent of Shipments
	1	2
	<u>carlots</u>	<u>percent</u>

Potatoes

Alabama	4,448	95
Arizona	3,172	70
North Carolina	1,933	55
Florida	4,965	50
Delaware	1,828	40
New Jersey	2,687	30
Pennsylvania	682	5

Lettuce

Arizona	12,994	40
California	13,690	20

Peaches

South Carolina	5,827	85
Arkansas	968	50
Michigan	131	5

Apples

Washington	18,336	72
Pennsylvania	542	18
Virginia	809	12
Michigan	852	9
New York	1,043	8

/1. Both rail and truck.

Prepared by: Fruit and Vegetable Division, AMS, USDA

Table 3

Variation Between Selected Commodities in Use
of Inspection in Florida during 1959

Commodity	: Carlots/ <u>1</u> : Inspected :	: Estimated : Percent of : Shipments
	1	2
	<u>carlots</u>	<u>percent</u>
Celery	7,969	73
Green Corn	7,269	71
Potatoes	4,965	50
Cabbage	3,030	35
Green Peppers	180	5
Green Beans	52	1

1. Both rail and truck.

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Table 4

Fresh Fruit and Vegetable Inspections
Performed in Terminal Markets
July 1, 1959-June 30, 1960

City	:	Percent of	:	Percent of
	:	Wholesale Market	:	Chain Store Direct
	:	Receipts Inspected	:	Receipts Inspected
	:	1	:	2
Pittsburgh		38.9		1.8
New Orleans		28.5		3.8
Detroit		8.8		1.4
Chicago		5.5		3.3
Atlanta		4.5		1.2
Boston		4.1		2.1
New York		3.9		2.1
St. Louis		3.7		1.1
Washington, D. C.		3.3		1.1
Louisville		3.1		1.5
Cleveland		3.1		0.9
Cincinnati		2.9		2.1
Dallas		2.3		2.6
Philadelphia		2.3		1.0
Baltimore		2.3		.07
Denver		2.1		.04
San Francisco		2.1		.09
Portland, Oregon		0.7		0.7
Los Angeles		0.5		0.08

Table 5
Government Inspection for Chain Stores in Selected Cities
1959-60

City	: Apples :	: Cantaloupes :	: Grapefruit :	: Lettuce :	: Oranges :	: Peaches :	: Potatoes :	: Tomatoes :	: Watermelons :	: Total, 9 Products :
	: 1 :	: 2 :	: 3 :	: 4 :	: 5 :	: 6 :	: 7 :	: 8 :	: 9 :	: 10 :
	--- Number of Carlots/100 ---									
Atlanta	4	4	-	17	-	-	29	-	2	56
Baltimore	2	5	4	12	20	-	10	1	1	55
Boston	-	13	2	11	6	13	21	14	1	81
Newark	7	27	5	74	27	8	73	8	12	241
New York	13	9	21	58	29	16	36	53	21	256
Philadelphia	4	10	6	45	13	4	22	4	7	115
Pittsburgh	5	1	5	23	3	5	58	3	3	106
Chicago	23	17	29	119	44	13	101	13	49	408
Detroit	16	5	22	22	12	4	44	10	28	163
Cincinnati	8	3	4	19	11	6	9	-	7	67
Cleveland	3	4	2	7	3	4	22	-	12	57
New Orleans	13	2	3	9	5	5	79	-	1	117
St. Louis	2	4	-	9	11	4	4	1	2	37
Los Angeles	1	-	1	-	-	-	2	-	1	5
San Francisco	-	-	1	2	2	-	7	-	-	12
Total - 15 Cities	101	104	105	427	186	82	517	107	147	1,776

1. Both rail and truck.

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Table 6

Government Inspection for Certain Chain Stores
in Selected Cities During One Month in 1960

Chain	City				
	:	:	:	:	:
	A	B	C	D	E
	:	:	:	:	:
	1	2	3	4	5
- Percent of Receipts Inspected -					
1	10	*	*	3	13
2	6	1	0.2	*	*
3	7	0	*	*	0.3
4	*	*	3	*	3

* Does not operate in this city.

Prepared by: Fruit and Vegetable Division, AMS, USDA.

Mr. GRANT. Are there any questions?

Mr. TEAGUE of California. Since Mr. McIntire is a member of the full Committee on Agriculture, I ask unanimous consent that he be asked to sit with the subcommittee and to direct any questions he cares as the witnesses appear.

Mr. GRANT. We will have to take that under conference. [Laughter.]

Mr. McINTIRE. I will stand by, Mr. Chairman, thank you.

Mr. JENNINGS. As I understand, the present charge, Mr. McIntire, for this inspection service is \$25.

Mr. McINTIRE. That is right.

Mr. JENNINGS. Your bill provides that it may be increased to \$50?

Mr. McINTIRE. That is right.

Mr. JENNINGS. As I understand the act, it does not matter whether a chain has 25 stores, or whether it is an individual grocery store which has 1 store that the cost is exactly the same?

Mr. McINTIRE. That is right. There is an exemption set forth administratively which includes a great many of the smaller retail outlets. This is something I hope the committee will examine so that there can be a complete understanding as to how the act is administered and the necessity for increasing the fees.

I point out that since its very inception the administration of the act has been self-supporting through income from fees.

The \$50 figure is simply an upper limit. It is not intended that it shall be changed from \$25 to \$50, because the Department has the responsibility to assess on the basis of the license fee only such sums as are adequate to soundly finance the cost of the service.

Mr. JENNINGS. Would you have any objection to exempting a small retail operation who purchases, say, 90 percent of their products from one central wholesaler or distributor who comes under this act?

Mr. McINTIRE. I think that this is an area in which the retail association has a specific proposal, and an amendment, I think the committee should take that under serious consideration. I think the committee should bear in mind that this act is intended to provide a vehicle whereby those who receive fresh fruits and vegetables and frozen fruits and vegetables in conformity with the transaction, must pay for them. I think we want to be a little careful how we take some of these issues and not just say, "this is inequitable," or "that is inequitable." We want to be a little careful that we do not lose sight of the real purpose of the Perishable Agricultural Commodities Act, and that is, that those who receive their commodities in a condition that is in accordance with the terms of the transaction are going to have to pay for them. I believe this should not be lost sight of as you give very careful consideration to some of the details.

Mr. JENNINGS. I just wanted to bring this question up at the beginning, so that we might have an opportunity to delve into its many ramifications. That is one in particular that was brought to my attention.

Mr. McINTIRE. Those representing the retail trade have some specific language in this regard to which I sincerely hope the committee will give careful consideration.

Mr. JENNINGS. Thank you.

Mr. GRANT. Thank you very much, Mr. McIntire.

Mr. McINTIRE. Thank you.

Mr. GRANT. Our first witness is Mr. George R. Grange, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture. We will be glad to hear from you now.

STATEMENT OF G. R. GRANGE, DEPUTY DIRECTOR; ACCOMPANIED BY NATHAN KOENIG, SPECIAL ASSISTANT TO THE ADMINISTRATOR; J. J. DIAMOND, CHIEF, REGULATORY BRANCH; WILLIAM E. PAULSON, HEAD, LICENSE SECTION, REGULATORY BRANCH, FRUIT AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE; AND JAMES E. HORTON, OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. GRANGE. Mr. Chairman and members of the committee, I have a statement that covers the highlights of H.R. 5023, and with your permission, I would like to read it.

Mr. GRANT. As you desire, but if you would like to submit it for the record and then comment on it, that would be very well.

Mr. JENNINGS. Since it goes into the details and the operation of this Perishable Agricultural Commodities Act, I think that the witness should read it, so that we may have the background.

Mr. GRANT. Very well.

Mr. GRANGE. This bill would amend the Perishable Agricultural Commodities Act of 1930. The Perishable Agricultural Commodities Act establishes a code of fair trading practices governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. To make this code effective, the act provides that (1) each commission merchant, dealer, and broker subject to the act obtains a license; (2) false accounting, failure to make full payment promptly, unjustified rejections or failure to deliver, misbranding, and other unfair practices are violations of the act; (3) each licensee shall keep complete and correct accounts and records on all transactions; and (4) the Secretary may investigate complaints, issue reparation orders, and refuse, suspend, or revoke licenses. Each licensee must pay an annual license fee. The fees are deposited in a special fund from which the cost of administering the act, other than legal services, is paid.

The fruit and vegetable industry has undergone significant changes in both its market structure and distribution practices since 1930. The act has previously been amended several times to keep its provisions in alignment with existing industry needs. The purpose of this bill is to effect certain improvements in the act in recognition of existing practices and problems.

As Mr. McIntire indicated, one of our primary ways of doing that is with an industry conference group that we have been working with for the past several years trying to keep the act and its operations under surveillance and determining those elements of the act or regulations under the act which require modification or changes in order to be able to do as effective a job as possible in carrying out the objectives of the act. These objectives are solely and simply a code of fair trading practices.

There are two main phases of activity in administering the act. The first provides that any person may complain to the Secretary concerning any violation of the fair trading principles and, if the facts warrant, the Secretary shall then call upon the person complained against to satisfy or answer the complaint. The act further provides that the Secretary shall investigate all reasonable complaints. If the Secretary concludes from the evidence submitted by the parties that a violation has occurred, he shall determine the amount of damages which were sustained and he shall then issue an order requiring the offender to pay such damages to the injured party by a specified date. The offender's license is automatically suspended unless he pays the amount of the award or appeals the Secretary's decision to a district court of the United States, as provided in the act.

The second main phase of activity is authority for the Secretary to suspend or revoke licenses as a disciplinary measure. The act provides that the Secretary may suspend licenses for not more than 90 days for any violation and may revoke licenses for repeated or flagrant violations.

The following information presents briefly the scope of activities under the act. There are approximately 25,000 licenses in effect. Approximately 2,500 complaints are received annually and amicable settlements average in excess of \$1 million annually. Last fiscal year 368 formal orders were issued covering reparation awards totaling approximately \$425,000. In addition, our offices receive in the neighborhood of 8,000 inquiries annually which are not listed as complaints but contribute to the settlement of a large number of disputes between the parties involved.

Of course, the majority of disputes in the trade are settled between the parties concerned, without referral to this impartial umpire or referee.

The fact that there is such a code, in the opinion of the great majority of the industry, gives them a basis for being able to work it out themselves; in other words, they know that this is here to resort to if the occasion warrants. So we do not want to imply that these are the only times where there are misunderstandings between the parties to a transaction. Of course, we recognize the great majority of them are settled between the parties without referral to the Department of Agriculture, but this is the basic code. They make reference to it. Many people try to make their settlements in accordance with these requirements without the necessity of referring them to us for a decision or a determination.

Mr. TEAGUE of California. Since the witness has interrupted his prepared statement, I would like to ask him to give us one or two typical examples referred to.

Mr. GRANGE. I have as a part of my statement at the end a few examples. They bear on the subject of retailers which we understood would come up and, also, frozen food brokers. If that does not cover it adequately, I will be glad to add to those at that time, if that is all right with you.

Mr. TEAGUE of California. Yes; that is very satisfactory.

Mr. GRANGE. As stated in Secretary Freeman's report on H.R. 5023, one of the main purposes of this bill is to establish a clear-cut

basis for licensing or employing a person whose license has been suspended or revoked or who has otherwise violated the act. In order to accomplish this, the bill rewrites entirely the sections concerning licensing and employment of such persons. The more important revisions are:

1. Clarify the language of the act to indicate that a person whose license had lapsed or who had failed or refused to obtain a license at the time the violation occurred or at the time the Department's order was issued is in the same category as one who had a valid license.

2. Clarify the language of the act to indicate that self-employment (that is, owner of a firm) is under the same limitations as are imposed on other persons employed in the business.

3. Change the definition of employment by deleting the term "responsible position" and make the limitations applicable to any position.

4. Establish realistic and equitable debarment periods and bonding requirements for relicensing or employment of a person against whom there is an outstanding reparation award or who has otherwise violated the provisions of the act.

5. Change the length of time that a surety bond would have to be maintained following the time of relicensing or employment from the present 2-year period to 4 years.

These proposed changes in the act reflect the view that, except in extremely aggravated cases, a person should not be denied a license indefinitely either under the mandatory provisions of section 4(b) or by exercising the option of questioning fitness for license under section 4(d). In general, if he posts a satisfactory surety bond, a person would be relicensed after 2 years following revocation or failure to satisfy a reparation order. If his employer posts a satisfactory surety bond, such a person would be eligible for employment by another licensee after 1 year following failure to pay a reparation order. The bonding requirement would bar persons from being relicensed for 3 years who, due to poor financial status, were not able to obtain a surety bond. We believe that it is reasonable to require some measure of assurance that such persons will carry out their future obligations better than they had in the past and, if they cannot obtain a satisfactory bond, they should not be licensed. Persons who could not obtain a bond would have to wait at least 3 years following the effective date of the Secretary's order before they would be eligible to be relicensed and would have to wait at least 2 years before they would be eligible to be employed by another licensee.

I would like to inject at this point the statement that the matter of licensing and employment constitutes the major revisions that are proposed in this bill. These are rather technical matters because of all of the various arrangements we encounter in administering the act, attempts, deliberate or otherwise, to circumvent the provisions of the statute, in reviewing all of the different situations with our conference group, the specific proposals have been developed, which, in our opinion, and in the opinion of these industry representatives, would strengthen the act considerably in this field. As you can well imagine, the matter of relicensing after a license has been lost, or the matter of employment by another licensee, after that per-

son being employed has lost his license, is with us every day because most of the people in this trade are limited by training, background and education to this particular field, in trying to seek their most gainful employment. They do not leave the fresh-frozen fruit and vegetable trade and become a real estate salesman or something of that nature. So the matter of how we handle and what kind of limitations we impose, to make the law effective, is a very critical question.

The bill provides that an oral hearing in reparation proceedings need not be afforded unless the damages claimed exceed the sum of \$1,500. We believe that this increase from \$500 to \$1,500 is reasonable and realistic. Last year about 50 percent of the cases on which oral hearings were held involved sums of less than \$1,500. Handling of formal complaints would be expedited significantly if the shortened procedure, under which written submissions of evidence are made, was authorized for these smaller cases and would result in substantial savings in costs of hearing to the parties and to the Government.

The bill provides that PACA funds would no longer be used to pay for the costs of administering the Export Apple and Pear Act. Since there is no connection between these two acts, we do not believe that PACA licensees should be required to finance the administration of the Export Apple and Pear Act from their annual fees. We, therefore, agree with the proposal that appropriated funds should be made available to cover the cost of administering this latter act. As stated in the Secretary's report, this change in financing would not require a budget increase.

The bill clarifies the provision which requires that a bond in double the amount of the award to be filed by the appellant in appealing a reparation order to court. It also specifies the type of bond which would be acceptable. The bill corrects a deficiency in the act relating to automatic suspension of a license following an appeal if the district court sustains the reparation order. The act now provides that a license shall be automatically suspended after 10 days from the date of judgment on the appeal unless prior thereto the judgment of the court has been satisfied, and makes no provision for withholding the suspension if the judgment of the district court is appealed to the court of appeals. The bill takes care of this point by providing that the license will not be suspended while a stay of the judgment is in effect.

The bill provides authority for the Secretary to increase the annual license fee to a maximum of \$50 if necessary to meet the expenses of administering this Act and the Produce Agency Act. Under the current \$25 fee, PACA administrative expenses have exceeded collections for the past 2 years, necessitating withdrawals from the limited reserve fund which has been built up over a period of years. An increase in the license fees, therefore, is urgently needed. Otherwise, our enforcement operations will have to be sharply curtailed. Current costs would necessitate an increase in the fee of about \$10 per license. It is highly desirable, however, to set the maximum fee at \$50 in order to make adequate provision for further increases in operating costs which may occur in the future. We approve of the provision requiring the Secretary to give public notice and an opportunity for interested parties to file their views or objections prior to the effective date of any increase in the fee.

We understand that proposals will be made to provide broader exemptions for retailers and for frozen food brokers under the act. We further understand that two major reasons are given in support of these proposals. The first reason is that exclusion of independent retailers and frozen-food brokers would not impair the effectiveness of the act. We strongly disagree with this view. The second reason is that the license fee is not equitable because a variable fee is not assessed depending on the relative size or volume of business of each licensed firm. We are not opposed to the principle of variable fees if the fruit and vegetable industry favors such an arrangement. We do not believe, however, that the question of a flat fee versus variable fees is justifiable grounds for excluding any important segments of the industry, such as retailers or brokers, from the provisions of the act.

Over 95 percent of all single unit retail stores are now exempted from the PAC Act. The remaining 2 or 3 percent, which are subject to license, are virtually all supermarkets whose purchases of fresh and frozen fruits and vegetables average over \$50,000 per year per store.

Every segment of the fruit and vegetable industry—shippers, brokers, truckers, jobbers, wholesalers, and retailers (I should say large retailers who are subject to license) must observe the fair trading rules of the PAC Act if the industry is to function in an orderly manner. In their capacity as wholesale buyers, retailers are one of the most important links in the chain of distribution. Retail functions, as such, are not covered by the act, but retailers are operating in a manner similar to other dealers in making wholesale purchases of fruits and vegetables. It is as essential for retailers to live up to their contractual bargains as it is for their suppliers. Complaints under the act have been filed by retailers against suppliers and vice versa. No one part can be left out and still expect the whole to operate smoothly and efficiently.

I would like to add at that point the fact that a retailer, or any other licensee, procuring his supplies from someone who, also, is licensed does not, in our judgment, constitute grounds for saying that the buyer does not have to have a license. This whole chain of distribution is important in carrying out these fair trading principles. The matter of a questionable rejection, when the goods actually meet the terms of the contract, has just as much impact and effect all the way down through the channel of distribution, regardless of who it was that did not live up to the fair trading principles of PACA.

The question of failure to pay has the same effect, whether it is failure to pay another licensee or failure to pay someone, such as a grower who is not subject to license in his capacity as a grower. In our judgment you cannot distinguish between the different elements of the trade solely on the basis of whether they are trading with others who are licensed.

Many of the complains under the PAC Act involve disputes between two licensees located in the same city on commodities which have originated outside the State. The coverage of the act would be significantly restricted if it were amended to limit its jurisdiction to only those transactions involving direct shipments from one State to another State. There is no more justification for exempting a supermarket which happens to buy the majority of its produce from a local

wholesaler than there would be to exempt wholesalers, many of whom receive all their produce from local carlot jobbers.

The fact that the two parties to a transaction are located in the same general area or city has no bearing on whether or not a PACA complaint is filed. As long as the product has moved or is in the process of moving in interstate commerce. We receive, for example, complaints by farmers against dealers or shippers located right in their home town where they have not been able to obtain, in their judgment, an adequate accounting from that shipper, or the shipper has not lived up to the contractual terms they have agreed to. In the same manner, we receive complaints between two wholesalers located in the same city involving the sale of a shipment that has originated outside of the State, or as I have stated earlier, we receive complaints by wholesalers against supermarkets or retailers located in that city. I will point out specific examples of such cases at the end of this statement.

Coverage of brokers is essential in order to obtain effective enforcement of the act. This is especially true in frozen fruits and vegetables because of the widespread use of brokers in this industry. Exemption of brokers would mean that no requirements could be established concerning the type of confirmations which they issue or the records they are required to maintain. The Department would not have access to the brokers' records which is essential in many cases in order to determine the facts in investigating individual complaints. If buyers and sellers of frozen fruits and vegetables are to be covered by the act, then it is essential that brokers also be covered.

There are about 450 frozen food brokers out of a total of 25,000 firms holding PACA licenses. Most of these brokers specialize in frozen foods and negotiate contracts amounting to thousands of dollars.

There has been an increased number of complaints under the act involving frozen foods and brokers have been the complaining party in a number of these cases. Reparation orders have been issued by the Department in favor of brokers calling for the payment of brokerage fees, some of which have amounted to several thousand dollars. Also, compliance by the parties with the terms of their contract is of vital importance to a broker. It would appear, therefore, that frozen food brokers are benefiting from the PAC Act.

The question of the possible inequity of having the same annual fee for each licensee regardless of his size or volume of business is not confined to retailers and brokers. It would apply equally well to shippers, wholesalers, truckers, commission merchants, and other types of licensees. We believe it is the common practice to assess a standard fee for each type of Federal, State, or local business license. Whether a flat fee or a variable fee based on volume of business is more equitable could be argued either way. We believe that a \$35 or even a \$50 annual fee, which amounts to 10 or 15 cents per day, is not unreasonable for any firm which is engaged in business subject to the act. Many members of the industry believe that the small operators receive the greatest amount of benefit and protection from the PAC Act because large firms are naturally in a stronger position when it comes to protecting themselves from unfair trading practices.

As stated earlier, we have no reason to object to the principle of variable or graduated fees if the industry desires to make such a

change. Of course, we would not like to have a system adopted which would be difficult or costly to administer. Fees based on the quantity or dollar value of commodities handled each year would require additional reports from licensees. Quite aside from the administrative difficulties involved, it is problematical if the industry would welcome the necessity of having to furnish such information. The problem of inaccurate reports coupled with fluctuations in volume, prices, and profits for fruits and vegetables makes the practicability and equity of this approach highly doubtful.

An alternative approach, which would provide a rough measure of size of operations, would be to assess a supplemental fee for each outlet, packing plant, office, or trade name operated by each licensee. Some of the largest firms have only a few outlets or operating units so this approach, although workable, would not fully accomplish the objective of relating fees to volume of business.

Unless there is widespread industry support for assessing supplemental fees, we recommend that H.R. 5023 be enacted without change. We believe that the provisions of this bill are highly desirable and urge that favorable action by Congress will be taken as soon as possible.

As I stated earlier, I have a few examples of specific cases I would like to include as a part of this statement. The first example has to do with retailers. They show, that during the past 2 years, we have had 133 complaints filed against retailers and 119 of those were for failure to pay; 14 were because of unjustified rejection. It was alleged the rejection was unjustified.

The specific examples, which are actual cases taken from our records, are as follows:

1. Supermarket in New Jersey bought a load of South Carolina watermelons from wholesaler in New Jersey. I might say a licensed wholesaler in New Jersey. Supermarket accepted melons and did not object to their quality until wholesaler asked for payment 2 weeks later. Supermarket then said melons were poor and asked for large allowance from invoice price. PACA found supermarket had no evidence to support its contention and obtained check for \$575 in full payment of load.

Mr. TEAGUE of California. What would you do in a situation in California, for instance, where there must be many brokers who deal only with purchases made in California and sales are for consumption in California, in other words, does the Department claim any jurisdiction when the parties do not engage in interstate commerce?

Mr. GRANGE. If the transaction is solely in intrastate commerce we do not have jurisdiction under the PAC Act. In California, the great majority of the dealers, brokers, or commission merchants of any size are, also, handling transactions in interstate commerce, and they, therefore, are subject to license. If we receive a complaint on a specific transaction one of the first things we do is to establish whether or not that particular transaction was involved in interstate commerce.

Mr. TEAGUE of California. When a dealer, part of the time, deals in interstate commerce, you do have jurisdiction over that particular transaction, but when it involves the sale of oranges from Los Angeles

County for sale to someone in Los Angeles, to a supermarket there, you do not have jurisdiction there?

Mr. GRANGE. We have to determine in each case whether we have jurisdiction. Insofar as his licensing liability, if he is handling part of the transaction in interstate commerce, then he is required to be licensed.

2. Supermarket in West Virginia bought mixed load of potatoes and oranges for \$135.40 from wholesaler in Baltimore on April 20. After failing to get reply to numerous statements and letters, wholesaler filed PACA complaint on October 23. Retailer remitted full payment of \$135.40 on October 28.

I might add in the intervening time, between October 23 and October 28, there had been a contact made by PACA representative with the supermarket.

3. Supermarket in Pennsylvania bought load of U.S. No. 1 Maine potatoes from wholesaler in Harrisburg, Pa. Retailer rejected load claiming potatoes failed to meet grade on delivery. Truck returned to Harrisburg; wholesaler obtained Government inspection which showed potatoes were in fact U.S. No. 1 grade; wholesaler sold potatoes to another buyer for \$137.30 less than original invoice price; and filed PACA complaint for recovery of damages. Retailer remitted payment of \$137.30 after PACA investigation.

4. Supermarket in Pennsylvania bought a load of Florida watermelons at an agreed price of \$200 f.o.b. Supermarket told shipper that it was going to reject melons because 90 percent of them were damaged by scarring on arrival. Shipper complained to PACA. Investigation showed that scarring damage occurred in transit. Since this was an f.o.b. sale the buyer was responsible for the transit change, rather than the seller. Supermarket accepted melons; paid shipper full invoice price; and filed claim against the carrier.

Mr. BEERMANN. May I ask a question?

Mr. GRANGE. Yes.

Mr. BEERMANN. On example No. 3, where the load was sold for \$137.30 under the original invoice price, how did that come about?

Mr. GRANGE. The wholesaler disposed of the load of potatoes to the best advantage he could. Under our regulations he had to exercise normal care and diligence in disposing of it. I know in this instance he sold them for the account of whom concerned until he could establish his claim. The total loss he suffered from the invoice price on his original sale amounted, in this instance, to \$137.30. He then filed a claim with us for damages, and because he had supporting evidence to show the potatoes he offered did, in fact, meet the terms of the contract, we, naturally, held that it had been an unjustified rejection; and, therefore, the supermarket was responsible for payment of the damages.

Mr. BEERMANN. Could a situation like this arise, that a buyer after purchasing found out that he had paid too much according to the price in his local area for the merchandise and then rejected them on some other basis, but, in fact, it was because of the price; would you help the seller to collect? Would you become a party to that?

Mr. McINTIRE. Will you yield on that point?

Mr. BEERMANN. Yes.

Mr. McINTIRE. May I say that your question goes to the basic purpose of this act. Many receivers would arbitrarily refuse to accept goods on arrival even if these goods met grade specifications set forth in the confirmation of sale. Unless there is some vehicle similar to the PAC Act, then the shipper is completely out in the woods. Oftentimes the receiver would take advantage of a price decline and try to deny his responsibility in receiving the shipments. None of these receivers are required to accept the shipment if it fails to meet the specifications of the confirmation, but if it does meet the specifications, then they are obligated to pay.

Mr. BEERMANN. Thank you for that explanation.

Mr. GRANGE. It is known in the trade as market disease or market rot, rather than a disease or rot of the product. As Mr. McIntire stated, and I assume he knows from personal experience, if you get a carload of a perishable commodity, such as potatoes, shipped from Maine to Detroit, Mich., and at a delivered price of \$3.50 per hundred-weight, when the potatoes are received the market price has dropped, and since it is now down to \$3, it could well be that if that buyer combed those potatoes long enough and hard enough he could find some kind of rot or disease, allegedly, and could inform the shipper that he was not going to accept the shipment. If these were not perishables it would not be quite so much of a problem, insofar as the seller is concerned. If it were grain or shoes or something that you could put in storage and then find out what, if anything, was wrong with it and make some disposition of it, it would be different. That is basically the situation, as the long record back in the late twenties, when this act was being first formulated, amply bears out. In the case of perishables, you are pretty much at the mercy of the buyer under circumstances like that. And it was an attempt on the part of the industry, and approved by Congress, to set up some type of a specialized vehicle that would try to provide a means of obtaining effective enforcement of what is known as a code of fair trade practices.

Mr. BEERMANN. We have had experiences like that, too. I believe in the buyer and seller honoring their contract.

Mr. GRANGE. The other examples have to do with the matter of frozen food brokers, and during the last 3 years we have had a total of 37 complaints where the broker has been the complainant. We have awarded to frozen food brokers, the amount of \$36,426. We have had 18 cases where the frozen food broker has been the respondent and have awarded to them \$5,262. I will run quickly through these examples.

1. Two brokers filed PACA complaints against a third broker for payment of brokerage fees due on sale of frozen cauliflower. Sale was made in April 1960. Complaint was filed in January 1961. Payment in full of \$1,161 was made to the two complaining brokers in April 1961.

2. Associate broker filed PACA complaints against originating broker for payment of brokerage fees due on sale of frozen apricots and cherries. Sale was made in July 1960. Complaint filed on December 8, 1960. A complaint under the act has to be filed within 9 months after the date of the transaction. Payment in full of \$608 was made on December 30, 1960.

3. Broker, in name of his principal, filed PACA complaint against buyer for failure to pay for load of frozen strawberries. Sale was made in July 1960. Complaint was filed in November 1960. After several contacts by PACA, buyer made payment in full of \$1,479 and broker then received his brokerage fee from the seller.

4. Buyer filed PACA complaint against seller seeking rebate of freight charges to intermediate point on carload of frozen corn. Broker's written confirmation of sales showed sale was made f.o.b. point of storage—not f.o.b. of original shipment. Seller rebated \$977 to buyer. Broker was not directly involved in this case but it shows necessity of having access to broker's records and means of enforcing PACA requirement that brokers issue written confirmations of sale in order to properly investigate and handle complaints.

Mr. Chairman, there is just one other item that I would like to refer to, if I may. There have been some statements made concerning the fact that in our dealings with retailers many of the retailers we contact in person and by writing have not known of the existence of the Perishable Agricultural Commodities Act or their licensing responsibility under it. I would just like to say we have and are doing as much as we know how to acquaint all segments of the industry, including retailers, concerning the PACA Act and their rights and responsibilities under it. In that regard I would like to refer to a special bulletin which we have issued entitled, "What Retailers Should Know About Being Licensed Under the Perishable Agricultural Commodities Act."

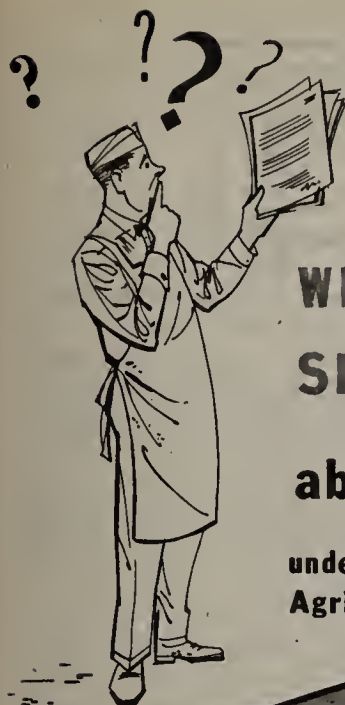
I have a supply of these bulletins here in the event the committee members are interested in scanning it. It covers such subjects as: "What is PACA?" "How Does PACA Affect Retailers?" "What is the Purpose of PACA Licenses?" "What Retailers Are Required To Have a PACA License?" "Wholesaling or Jobbing Quantity," "Purchases From Local Distributors," "How Many Retailers Are Subject to License?" and a paragraph entitled, "Must Each Supermarket Be Licensed?"

These have been supplied to all of the trade associations we know of in the retail field. There has been wide distribution made of this bulletin in certain areas. Some of the State associations have been very helpful and cooperative in distributing this material and other material to their members. Some of the State and local associations have asked representatives from my agency to appear on their programs at their annual meetings. We think there is, in general, rather good information concerning PACA available to the retail industry, and we think that, in general, in many areas that information has been disseminated and made known to the retail organizations concerned.

That, Mr. Chairman, completes my statement.

Mr. GRANT. Your bulletin will be made a part of the record at this point.

(The bulletin entitled, "What Retailers Should Know About Being Licensed Under the Perishable Agricultural Commodities Act" is as follows:)



WHAT RETAILERS SHOULD KNOW

about being licensed

under the Perishable
Agricultural Commodities Act

Some food retailers and others do not understand why retailers should be licensed by the U. S. Department of Agriculture under the Perishable Agricultural Commodities Act. They construe this requirement as an unnecessary imposition, and a needless tax from which they derive no benefit.

If retailers were not an integral part of the produce business, there would be reasonable grounds for such a position. But they are a most important sector in the business of buying and selling fresh and frozen produce. They have an important stake in seeing that their purchase transactions in these commodities conform to sound trading practices. It is this simple but basic thesis which makes all retailers doing more than a specified amount of purchasing of fresh and frozen produce subject to the Act.

The purpose of this pamphlet is to provide basic information on the Perishable Agricultural Commodities Act (PACA) so that food retailers can better understand how and why it relates to their activities.

U.S. DEPARTMENT OF AGRICULTURE
AMS-357

AGRICULTURAL MARKETING SERVICE
FRUIT and VEGETABLE DIVISION

JANUARY 1960



WHAT IS PACA?

The Perishable Agricultural Commodities Act sets up a system for enforcement of contracts in the marketing of fresh and frozen fruits and vegetables. The PAC Act does not tell buyers and sellers what kind of contracts they can make. It does say, however, that once a contract has been made, the parties involved must carry out their bargain unless they have some better reason for not doing so than a change in the market or a change in their own personal situation.

There aren't many Federal laws like the PAC Act. Congress passed it after extensive hearings in which representatives of the fruit and vegetable industry pressed vigorously for special machinery to cope with their special problems. They presented evidence to show that such machinery was needed because of abuses which otherwise could not be effectively curtailed in the marketing of perishable fruits and vegetables. The buyer or seller dealing in these products is especially dependent upon the good faith of the other party to the contract. Most of these perishable products can't be held on track or in a truck for any length of time or diverted to storage while a dispute about the transaction is being settled.

Although the PAC Act was enacted in 1930, it has been amended a number of times and the reasons for having the law are just as sound today as they were when it was first enacted. This is evidenced in the general support for the Act throughout the fruit and vegetable industry.

HOW DOES PACA AFFECT RETAILERS?

Every segment of the fruit and vegetable industry--shippers, commission merchants, brokers and dealers, including truckers, jobbers, wholesalers, and retailers--must observe fair trading

rules such as those spelled out in the PAC Act if the industry is to function in an orderly manner. In their capacity as wholesale buyers, retailers are one of the most important links in the chain of distribution of fresh and frozen produce. Retailing functions, as such, are not covered by the Act, but retailers are operating in a manner similar to other dealers in making wholesale purchases of fruits and vegetables. It is as essential for retailers to live up to their contractual bargains as it is for their suppliers. Complaints under the Act have been filed by retailers against suppliers, and vice versa, in the same manner as complaints involving other types of licensees. No one part can be left out and still expect the whole to operate smoothly and efficiently.

Moreover, in the past several years there have been significant changes in the methods of marketing fresh fruits and vegetables and in the marketing channels through which they flow from growers to retailers. One of these changes has been the rapid growth of independent supermarkets -- both in numbers and in average size. Another has been the sharp increase in direct buying by retailers. Many supermarket operators have found it advantageous to purchase all or part of their supplies directly from shippers, thus minimizing their purchases on local terminal markets, while the same trend also has been evident in purchases by many voluntary retailer groups and corporate chains. With retailers being an integral part of the fruit and vegetable business, they enjoy the same benefits and should assume the same responsibilities under the PAC Act as other parts of the industry.

WHAT'S THE PURPOSE OF PACA LICENSES?

The system of licenses provided for in the PAC Act is the method of enforcing the law. Any

person subject to the Act is required to obtain a license and penalties are established for doing business without a license. Since a license may be suspended or revoked for failure to observe the fair trading standards, the licensing requirement provides the basis for action against violators.

Practically all complaints under the Act are those alleging that damages have been suffered because a licensee breached his contract without legal justification. The Department investigates each of these complaints and, based on its findings, tries first to reach an amicable and equitable settlement between the parties. If this is unsuccessful, the Department will entertain a formal complaint, give both parties an opportunity to submit further evidence, and then issue an order either dismissing the complaint or requiring one of the parties to pay the damages caused by his illegal breach of his contract. The Act states that the respondent's license to do business is automatically suspended if he doesn't either pay an order awarding damages or appeal it to court within 30 days.

The Act requires all commission merchants, dealers, and brokers doing business in fresh or frozen fruits and vegetables in interstate or foreign commerce to secure a license, for which the annual fee is \$25. The license remains in effect so long as the annual renewal fee is paid, unless it is suspended or revoked on order of the Judicial Officer of the U. S. Department of Agriculture. License fees collected under the PAC Act are used for administration of the Act.

WHAT RETAILERS ARE REQUIRED TO HAVE A PACA LICENSE?

Retailers are classified as "dealers" under the PAC Act and, therefore, are subject to license when they purchase fresh or frozen fruits and vegetables in wholesale or jobbing quantities on at least 21 days in a calendar year, whether the purchases are made directly from outside the State or from persons who have received the commodities from outside the State.

The authority for and Congressional intent to include retailers under the licensing provision is clearly expressed by the Act [Sec. 1 (6)]. It first defines a dealer as being any person engaged in the business of buying or selling fresh or frozen fruits or vegetables (in whole-sale or jobbing quantities) in interstate or foreign commerce. Next, certain exemptions are granted for growers, canners, and retailers.

The provision of the Act applying to retailers states that "no person buying any such commodity solely for sale at retail shall be considered as a dealer . . . in any calendar year until his purchases (in wholesale quantities) are in excess of twenty." Therefore, the only distinction between a retailer and other dealers is that the retailer must purchase produce in wholesaling or jobbing quantities on at least 21 days in a calendar year before he is subject to license, whereas other dealers are subject to license when they engage in business.

"WHOLESALE OR JOBBING QUANTITY"

A "wholesale or jobbing quantity" under the PAC Act has been defined to mean aggregate quantities of fresh and frozen fruits and vegetables totaling one ton (2,000 pounds) or more in weight per day shipped or received or contracted to be shipped or received. This definition applies to all dealers--truckers, jobbers, and wholesalers, as well as retailers.

PURCHASES FROM LOCAL DISTRIBUTORS

Retailers frequently ask whether they are subject to license when they make all their purchases of fresh and frozen produce from local distributors. The Federal courts have consistently held that interstate commerce is not limited to just the transaction which moves the goods from one State to another State. There may be one or more transactions before a lot is shipped from the State of origin or after it arrives within the State of destination and all these transactions are part of interstate commerce. For example, the sale of Washington apples by one dealer in Chicago to another dealer in Chicago is a transaction in interstate commerce. Thus, even though a retailer may purchase only from a local wholesaler, if the products originated in another State, his purchase is a part of the movement in interstate commerce.

HOW MANY RETAILERS ARE SUBJECT TO LICENSE?

The number of independent retail grocers subject to license was estimated for the Department in 1955 by a qualified marketing research organization which conducted a survey of a national sample of independent retail food stores. This survey showed that approximately 7,550 independent retail firms, or slightly more than 2 percent of the total of such firms, were subject to license at that time. These firms do approximately 43 percent of the total independent retail food business in the United States.

It was found that very few stores smaller than the supermarket category buy enough fruits and

vegetables to require a PACA license. On the other hand, a large percentage of supermarkets purchase a sufficient volume to be subject to license.

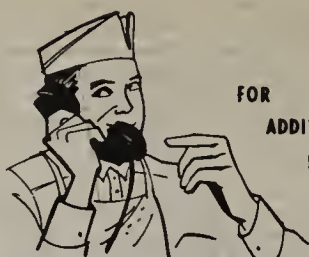
Many retail food firms have records of their purchases more readily available on a dollar basis than a tonnage basis. For this reason, the USDA has provided retailers with an informal "rule of thumb" that they may find helpful as a guide to whether the firm is subject to a PACA license. The index is based on purchase data from the survey of independent retail food stores. This survey showed that few firms purchasing less than \$600 per week¹ of fresh and frozen fruits and vegetables would be subject to license. On the other hand, it showed that practically all firms with purchases valued at more than this amount would be subject to license--that is, they have purchases of fresh and frozen produce aggregating one ton during any one day more than 20 times during the year.

MUST EACH SUPERMARKET BE LICENSED?

Questions sometimes are raised about the requirement that each independent supermarket operator subject to the Act must obtain a license, while a corporate chain operating multiple outlets need have only a single license to cover its entire organization. The PAC Act provides for the licensing of each "person" carrying on the business of a "commission merchant, dealer or broker", as these terms are defined in the Act. The term "person" is defined as including "individuals, partnerships, corporations, and associations" which means each separate legal entity. Under the law, a corporation is a "person" or legal entity in the same way as an individual proprietorship or a partnership. Thus, an independent operator with 3 or 4 supermarket outlets or with only one store -- if he does a sufficiently large volume of business -- has the same liability for a license as a corporation with a larger number of outlets.

Of course, since a retailer is licensed only in his capacity as a wholesale buyer of fruits and vegetables, any complaints under the PAC Act would be against the entire firm and not against one of his individual stores.

¹This index may be modified from time to time with changes in price levels of fresh and frozen fruits and vegetables handled by retailers.



FOR
ADDITIONAL
INFORMATION

To obtain additional information about PACA licenses or other activities under the Perishable Agricultural Commodities Act, contact any of the following offices of the:

Regulatory Branch
Fruit and Vegetable Division
Agricultural Marketing Service
U. S. Department of Agriculture

Room 2932
South Agriculture Building
Washington 25, D. C.
Phone: DUDley 8-2272 or
DUDley 8-4180

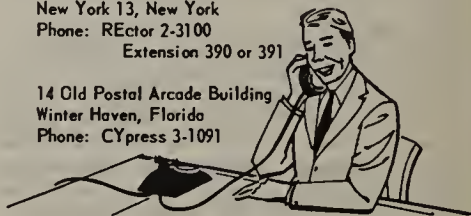
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U. S. Customs House
610 S. Canal Street
Chicago 7, Illinois
Phone: HARRison 7-6910
Extension 323 or 324

Room 2129
300 W. Vickery Street
Fort Worth 4, Texas
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Western Pacific Building
1031 So. Broadway
Los Angeles 15, California
Phone: RICHmond 9-4711
Extension 397

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139 Centre Street
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14 Old Postal Arcade Building
Winter Haven, Florida
Phone: CYpress 3-1091



Mr. GRANT. Let me ask you one question as to the first paragraph of your statement as to the fees charged, does that mean that fees that are received pay the cost of the salaries and expenses of those employed by the agency?

Mr. GRANGE. Yes, sir.

Mr. GRANT. That is under this act?

Mr. GRANGE. Yes.

Mr. GRANT. Does your agency pay the cost when you have to go to court on these cases?

Mr. GRANGE. No, sir. We handle complaints, conduct an oral hearing, if necessary, do the investigation work from PACA funds. The cost of any legal fees—of course, it is not necessary to have a lawyer to present a PACA complaint or case—is paid by the parties involved. Of course, if an order is appealed to court there are no payments made out of PACA funds to individuals for that purpose.

Mr. GRANT. Mr. Jennings?

Mr. JENNINGS. I think that you pretty well answered some of these questions in your pamphlet which you referred to entitled, "What Retailers Should Know About Being Licensed Under the Perishable Agricultural Commodities Act," but just as a matter of record, referring to the first paragraph of your prepared statement, who constitutes the commission merchant dealer or broker subject to the act?

Mr. GRANGE. They are defined in the act itself. A commission merchant is any person who handles goods for or on behalf of another person.

A broker is anyone who negotiates a sale or purchase of produce in commerce for or on behalf of another person.

And a dealer is defined by the act as any other person engaged in the business of buying or selling, except growers who are handling only their own produce, except canners who are buying the raw product only within the State where they are located, and except retailers unless they purchase in wholesale or jobbing quantities more than 20 times per year. So, it includes a trucker who is going out and buying for his own account. It includes what we commonly call the regular shipper who is buying from growers and shipping in interstate commerce. It includes wholesale receivers, jobbers, and anybody who is purchasing or selling fresh or frozen foods and vegetables in interstate commerce.

Mr. JENNINGS. Coming to the matter of the license, I think you have pretty well made your position clear when you say that you are not opposed to the variable fee if the food and vegetable industry favors such an arrangement. Do you see some advantage in the variable fee arrangement, that is, levying fees on a variable basis?

Mr. GRANGE. I said in my statement, sir, that the pros and cons of whether a variable fee was the most equitable, probably, could be argued on both sides. I guess that would indicate that like most everything we can see advantages and disadvantages to such an approach.

Whether the income tax principle of ability to pay should apply to business licenses is something we really have not tried to explore.

I have made reference, as Mr. McIntire did, to the industry conference group which has been extremely helpful to us. This subject has not been discussed with them.

We can see where a variable fee, if based on certain factors, would be extremely difficult to administer. Take income, for example, some people might have the initial reaction, "Well, that should be pretty simple—practically everybody is preparing income tax returns;" but this law, of course, covers only perishable agricultural commodities. Practically all licensees would have expenses and income outside the field of perishable agricultural commodities. It would necessitate getting into something quite different from just using the records that were kept for income tax purposes.

Of course, we have a lot of records we require in accordance with the PACA regulations.

There would be the matter of investigation of the kind of reports we would get in, whether it was based on volume or dollar value. And, there would be the question of how much money we would have to spend to make sure that everybody was paying his fair share as laid down by the requirements.

Mr. JENNINGS. Let me say I agree with you and some of the pitfalls this might have, but by the same token the merchant's capital license is based upon that same premise, on the premise of the volume of business that each person or each outlet does.

I am intrigued by your alternate approach here which you suggest or discuss, supplemental fees for each outlet. That would seem to me to be fair, because each outlet of a chainstore or a larger organization is in direct competition with an individual supermarket or an individual retailer. It would appear to me that to have a supplemental fee, for instance, for each of these outlets would be in keeping with the spirit of the law. Would you like to comment on that?

Mr. GRANGE. I will comment. We would not object, Mr. Jennings, to exploring the feasibility and ramifications of such an arrangement. This would not only apply to retailers, of course, if we were doing it. We have many other factors in the industry who have multiple types of operations.

Mr. JENNINGS. I understand that.

Mr. GRANGE. I am bringing up these others.

Mr. JENNINGS. I am speaking of the retail outlets.

Mr. GRANGE. I am bringing up these others to explain my statement that I think it would be necessary to go into the matter in some detail before we would be in a position to state with any degree of confidence how we think such an arrangement should be established, if any, or what its impact might be.

Mr. JENNINGS. I am very much intrigued by that idea. I think it is, probably, the best I have heard suggested so far. I like it better than the volume of business idea. I think you would have fewer administrative difficulties with it, and it would be more actable than the present law. I believe there are some inequities in the present law so far as license fees are concerned.

Mr. GRANGE. I might make just one further observation. If something like this ever were to be done I think it would be necessary to give the Secretary of Agriculture rather broad authority in making determinations of what is going to be defined as a separate operating unit or outlet. An example that occurs to me is in Mr. McIntire's district where some of the potato shippers may be operating two or more doors, as they call it there, in the potato houses on the railroad

sidings. Are we going to call them separate operating units or not? Just where do you set up your dividing line, you see. And with all of the various types we have within the industry, if you try to nail that down specifically in the statute itself, I would believe it would not be nearly as workable or desirable as establishing a principle, if it were to be done, and then giving the Secretary the authority to work within that principle.

Mr. JENNINGS. There is wide discretionary powers under the present act. I do not believe it would be curtailing those wide powers.

Mr. GRANGE. That is a thought that occurred to me that I wanted to mention in line with your statement.

Mr. JENNINGS. What would be the Department's position on an amendment to this act excepting those retailers who purchase 90 percent or more of their perishable agricultural commodities from licensed wholesaler supplies?

Mr. GRANGE. We think that would materially curtail our effective administration of the act.

Mr. JENNINGS. Have you had many complaints directed toward that relationship between the retailer and the wholesaler—the wholesaler having been covered by the act, as well as the retailer, too, but who purchases 90 percent of his supplies from that particular wholesaler or licensed wholesaler? I notice that you did not give a single example where that would be applicable in that case.

Mr. GRANGE. I believe there are some, Mr. Jennings.

Mr. JENNINGS. Which one?

Mr. GRANGE. I would say that example No. 1 would fit the case. Those purchases made by that supermarket were made from a licensed wholesaler located in that State.

The same thing would be true in example No. 2, where the purchases were made from a licensed wholesaler.

Mr. Jennings, we have not had a large number of complaints of this nature. I do not know what the total would be. Our total complaints per year for the entire industry is not large. I do not think that anyone should take the number of complaints themselves as a final measure of the benefit or effectiveness of the act.

Mr. JENNINGS. I quite well agree with you there. You prevent a substantial amount of abuses that might take place if the law were not in effect. I will not argue with you on that point. That is all. Thank you.

Mr. TEAGUE of California. I am sure you realize that there are two factors, one is the matter of the license—as a tax deductible business expense.

Mr. JENNINGS. Yes, I am aware of that.

Mr. TEAGUE of California. I do not think that the license, whether \$25 or \$50 would be unreasonable or would constitute an undue burden on anybody who comes under the act.

Mr. JENNINGS. My problem is that this license fee does not provide a differential between the small dealer as compared to the large dealer. The small independent market in my hometown, for instance, will have to pay exactly the same fee as the A. & P., the large supermarket. If they had to pay the same proportionately as an individual store which is located in my hometown, I would see no objection to it, but to have an individual operator pay the

same fee as the large operator with several outlets does not seem quite proper.

Mr. TEAGUE of California. I can see the merit to that. On the other hand, it seems to me it can be said that the small operator needs the protection more than the large operator does.

Mr. JENNINGS. I think it is well to have the law on the books. I am not asking for its repeal. I am advocating a more equitable distribution of the license fee.

Mr. McINTIRE. Will you yield?

Mr. JENNINGS. Yes.

Mr. McINTIRE. I would like to make the observation that this bill is not a correction to the basic act.

The agency in itself is not a collecting agency, but——

Mr. JENNINGS. It does have that effect.

Mr. McINTIRE. It is to cover the cost of going in to investigate the violations.

Mr. JENNINGS. That is right.

Does the Federal Government provide any other collecting agency outside of the courts—do you know of any?

Mr. McINTIRE. Yes, the Packers and Stockyards Act is a very good example of the same purpose.

Mr. JENNINGS. Outside of the agricultural field, do you know if the Federal Government provides an agency like this?

Mr. TEAGUE of California. How about the National Labor Relations Board?

Mr. JENNINGS. I do not think that is exactly the same kind of case.

Mr. McINTIRE. If you were subject to a decision on the part of the National Labor Relations Board in connection with the violation of pay for overtime, you would find it a very effective collecting agency on the part of the Government, would you not?

Mr. JENNINGS. Perhaps—yes.

Mr. McINTIRE. I think so, too.

Another point that Mr. Grange makes is that of the total number of retailers, very few are involved.

Mr. HAGEN. What is the magnitude of the amount involved?

Mr. GRANGE. Let me give you that figure. Our receipts last year were \$693,000. These include the fees and the arrearages for those who have operated for a period of time prior to applying for the license.

Mr. HAGEN. Could you not avoid the matter of the fee, and make it a matter of an appropriation from the Congress?

Mr. GRANGE. We would then have another problem, sir.

Mr. HAGEN. You mentioned in your statement, I believe, that only retail units of a certain size are required to pay a license fee. It would seem to me that the percentage you mention is rather small.

Mr. GRANGE. A wholesaler of jobbing transaction is defined in the regulation as being 1 ton per day. A retailer in order to be subject to the license has to have 21 or more such transactions per year.

Mr. HAGEN. Of a specified tonnage?

Mr. GRANGE. Of a ton.

It is a rather discriminating limitation in the sense that the great bulk of the single-unit operators which I assume you are referring to,

Mr. Jennings, are excluded from the licensing provision of the act. If they are excluded from the licensing provisions, keep in mind they are likewise excluded from any of the responsibilities or rights that are established by the statute.

Mr. HAGEN. Could a retailer who might otherwise be excluded voluntarily seek coverage?

Mr. GRANGE. The act provides that anyone may obtain a license voluntarily.

Mr. HAGEN. Does a chainstore, for example, obtain just one license for the \$50?

Mr. GRANGE. I cannot answer you specifically—

Mr. HAGEN. Does Safeway, for example, get one license for \$50 covering all these stores?

Mr. GRANGE. Let me answer you in this manner: Each separate legal entity is required to have a license. There are a number of larger organizations that have subsidiary corporations. For those, there is a separate license for each subsidiary corporation.

There are some large corporations that have a rather large number of licenses.

On the other hand, there are large organizations that have only one or, perhaps, two licenses to cover their entire operation.

Mr. HAGEN. If 1 corporation had 100 retail outlets they would have 1 license, would they?

Mr. GRANGE. Yes, sir.

Mr. HAGEN. Even though the individual store manager might do its own procurement for each individual store?

Mr. GRANGE. They would be procuring in the name of their principal. That is the point that I want to make. A retailer is licensed in his capacity as a wholesale buyer. His retailing operations are not covered by the provisions of the act. If I were to file a complaint against a retailer I am filing it against that firm. I do not know what store the produce went to. We, certainly, would not want to change this so that they would have to have separate licenses for each outlet.

When the question of gearing the fee to the number of outlets is brought up, I think, personally, the number of outlets in a sense is incidental to carrying out the provisions of the law.

Mr. JENNINGS. I would agree with that in carrying out the provisions of the law, but I am directing my remarks strictly to the revenue that it produces, and the inequities involved between them.

The present information I have is that the A. & P., with more than 4,000 stores pays a license fee of \$25; Safeway with more than 2,000 stores pays a license fee of \$25; while 4,000 independent supermarkets would pay \$100,000. That is just one example.

Mr. GRANGE. The only thing wrong with the example is that we do not have 4,000 independent licensed supermarkets. We have licensed solely as retailers approximately 3,500 firms.

Mr. JENNINGS. You have as retailers and wholesalers—I imagine that you would have a number of the independents of the individuals licensed as retail and wholesale, would you not, so you have 3,500 retailers. How many wholesaler-retail combinations do you have?

Mr. GRANGE. We have licensed as retailers in combination with some other activity, probably wholesale, although we do not have that information, approximately 1,600.

Mr. JENNINGS. How many do you have just wholesale per se?

Mr. GRANGE. About 12,000. That includes shippers and market dealers. The wholesaler category is the broad one based on Webster's definition, anybody dealing in mass or large block without regard to thinking of them only as a terminal market wholesaler, which is the common definition.

Mr. JENNINGS. Do some of the larger chain operations come under this 12,000 category?

Mr. GRANGE. I do not believe so—not following the court decision regarding the activity of some of the retail organizations in the wholesaling field with which you are undoubtedly acquainted. I do not know of any wholesaler activity on their part.

Mr. HAGEN. Are these New York City people, for example, who buy California oranges at auction in New York—are all of those dealers required to have a license?

Mr. GRANGE. Operating strictly as an employee of a licensed firm they would not be. They would be required to have a license in their own name if they are operating independently.

Mr. HAGEN. Do you attempt to police collusion between buyers in setting prices?

Mr. GRANGE. The act, as has been pointed out in earlier discussion among the committee members, is a unique one in that the PAC Act does not tell anyone what kind of a contract they should enter into. All it says is that if you have entered into a contract then you shall live up to the terms of the contract, unless you have some justifiable reason under the statute for not doing so. And, if you do not do it and somebody files a complaint and shows they suffered damages because of your breach of contract, then we may exercise the provisions of the statute seeking to recover damages.

So to answer your question, if buyers discriminate by collusion or other means and charge different prices it would not be covered by the provisions of the Perishable Agricultural Commodities Act.

Mr. HAGEN. If a group of buyers decided to lay off the market for a few days to depress the price you would not cover that, either?

Mr. GRANGE. We would not have jurisdiction over that.

Mr. HAGEN. Thank you. That is all.

Mr. MATTHEWS. As I understand it in the bill we are discussing it contains a proposal that the fees be increased. Can you give us some statement as to the justification of the fee increase or have you already done that prior to my coming in?

Mr. HAGEN. Yes, he did that.

Mr. MATTHEWS. Nevertheless, will you give me a brief statement as to the justification for that?

Mr. GRANGE. The fees we collect, sir, are used solely for the purpose of administering the act. Our expenses have increased, as others have, during the last few years. Currently, our expenses of administering the act exceed our receipts. The reserve fund in our PACA special trust fund is now reaching a dangerously low point, and within the very near future if something is not done we will be faced with the proposition of sharply curtailing our staff and activity in enforcing the act.

Mr. MATTHEWS. Thank you very much, sir. That is exactly what I wanted.

MR. HARDING. I notice that most of the examples you gave us were complaints concerning brokers in frozen foods. Is that true with most of your complaints, that they are in this area?

MR. GRANGE. No, sir. I selected those as examples because of the fact that there is a proposal that the frozen-food brokers be exempt from the provisions of the statute.

MR. HARDING. There is nothing perishable about brokerage, is there?

MR. GRANGE. There is nothing perishable about the dollars that are involved in any of these transactions.

MR. HARDING. Under the provisions of the act I can see the desirability of protecting the parties concerned in the transactions involving perishable commodities. I think that this is the purpose of the act, but from some of these examples you have listed here concerning the collection of brokerage it appears to me that the Department is getting into the field of a collection agency. If I were a broker selling a commodity, and the person for whom I was selling refused to pay me brokerage, I just would not sell for him again. I do not believe that the Department should collect or try to collect brokerage. That is much different than what I would determine to be the original purpose of the PAC Act.

MR. GRANGE. That is an incidental part of the activity. I think it is still part of the original purpose, sir. The importance of brokers is simply this, whether we are talking about a fresh product or a frozen product, if we have a complaint and a broker has participated in the transaction, usually there is a dispute concerning the terms of the contract; such as what quality or grade or delivery terms did they actually agree to. Most of the time that element is part of the complaint or the dispute. If a broker has been involved in the transaction the broker is the best source we have of being able to find out just what the terms of the contract actually were, and that is why we go into so much detail in our regulations in establishing requirements concerning brokers, the type of written confirmation which they have to issue, and the kind of records which they are required to maintain.

Again, if we exempt brokers from the licensing provisions we exempt them from all of these responsibilities.

Of course, brokers are very widely used in the frozen food business. Brokers are used widely, also, in the fresh produce business, although not to the extent proportionately that they are in frozen foods.

MR. HARDING. Let me ask you another question. How about processed foods other than frozen foods—do the provisions of the act extend, for example, to processed potatoes?

MR. GRANGE. Not to the processed product itself. Practically all potato processors in the country are subject to license because they are obtaining potatoes in interstate commerce for use in the manufacture of their products. The PACA as now written says, "Fresh fruits and vegetables whether or not frozen." Instant frozen potatoes are not "fresh" potatoes in frozen form, according to the legal interpretations and constructions that have been placed on the act over the period of time. Of course, as you can well imagine, you get to a rather narrow dividing point as to when a product moves from the field covered by the act.

MR. HARDING. Going back to this brokerage matter, if there was not an element pertaining to the quality of the produce being sold or the

conditions of the sale you would not enter into the dispute simply over the collection of brokerage—you would not enter into a simple dispute over brokerage payment, would you?

Mr. GRANGE. No, sir, that is not correct. We would accept such a complaint. Nonpayment is one of our most common complaints.

Mr. HARDING. Thank you.

Mr. GRANT. Thank you very much, Mr. Grange.

Mr. GRANGE. Thank you.

Mr. GRANT. Our next witness is Mr. Alan T. Rains, executive vice president of the United Fresh Fruit & Vegetable Association.

We will be glad to hear you now.

STATEMENT OF ALAN T. RAINS, EXECUTIVE VICE PRESIDENT, UNITED FRESH FRUIT & VEGETABLE ASSOCIATION

Mr. RAINS. Mr. Chairman and members of the committee, I would like the record to show that I am speaking for the Florida Fruit & Vegetable Association of Orlando, Fla., and for the Western Growers Association representing cantaloupes and vegetables in California and Arizona. I did not bring my communication of authority with me, but I can send them to you, if you wish.

My name is Alan T. Rains and I appear here today as the executive vice president of the United Fresh Fruit & Vegetable Association. This is a national association representing all factors in the fresh fruit and vegetable industry with a membership of approximately 2,700. We endorse H.R. 5023 and concur with Secretary Freeman's report. We respectfully urge the favorable action of this committee.

The fresh fruit and vegetable industry is proud of its record of developing, fostering, and operating under the Perishable Agricultural Commodities Act more than 30 years and for having supported the previous eight amendments to the act which strengthened or clarified it or authorized an increase in the license fee. We are also proud of the fact that this is not only an industry-initiated statute but also one that is self-supporting except for the legal administrative services which are paid for out of appropriated funds.

While we do not suggest that this committee act with undo haste, we do feel that there is considerable urgency here. In the first place, the Department of Agriculture has had to call on a rather small reserve to administer the act for the 2 years and since we do not want the Department's PACA services reduced, there appears to be only one solution and that is to increase the license fees. In this connection, I believe it should be emphasized that while this bill authorizes a maximum license fee of \$50, an increase of approximately \$10 is presently contemplated. We believe the requirements that the Secretary must meet in order to increase the license fee are adequate protection, particularly in view of the Department's excellent administrative record and understanding of the industry's problems.

In the second place, there is need for clarifying the licensing and employment provisions of the act where a license has been revoked or suspended. Or, for that matter, where a licensee has violated the act in any way. This bill undertakes to accomplish this and the sections of the act dealing with these subjects have been substantially rewritten.

We attach considerable importance to the licensing and employment sections of the bill because we believe they plug up some loopholes that have long been in need of attention. For instance, a licensee may have his license revoked and then arrange for his wife to take out a PACA license. She may be gainfully employed as a bookkeeper or secretary or a schoolteacher for that matter and may only concern herself with the activities of her newly formed firm by executing those documents that require her signature. In the meantime, her husband would run the firm even though his title might be janitor or truckdriver. The Department conceivably could be hard pressed to prove that the so-called truckdriver or janitor husband was, in fact, acting in a responsible position in which case the "wife-licensee" would need to comply with the bonding requirements of the statute. This may sound like a farfetched example but, I think it would not be difficult to find cases in the records of the Department that would be practically on all fours with the one I have just described. In other words, we urge that the Department be given the authority to make it impossible for persons with a record of suspensions or revocations to engage in the fresh fruit and vegetables industry in a responsibly connected position unless the bonding requirements of this bill are met.

It is my understanding that there will be some opposition to this bill expressed in terms of amendments that would release certain classes of licensees from the act. While I have not seen the actual language which may be submitted to this committee, I believe the underlying plea will be that the small licensee is being unduly burdened by a license fee without receiving commensurate benefits or services. In this connection, I should like to call to the attention of the committee that to my best information and knowledge during the more than 30 years that this statute has been in effect, and during the hearings before the committees of the Senate and House of Representatives on amendments to the act, there has not been one witness who has urged that any group of licensees be exempt from the provisions of the act and allowed to trade in commerce in the commodities covered by the act.

I think it should be borne in mind that probably the small licensee should be more interested in the protection he is afforded by PACA than the larger licensee for the simple reason that by virtue of his smallness and likely lack of financial strength, he is hardly in position to retain legal counsel in order to protect his rights in the case of a controversy involving terms of the contract, good delivery, or variety of other questions that arise regularly in the course of trading in these highly perishable commodities. A PACA licensee, large or small, is as close to good, sound advice as his telephone because all he needs to do is to call PACA, either in Washington or one of the field offices, to get advice or an opinion from a qualified representative. PACA handles some 8,000 informal inquiries such as this each year with the result that most of the misunderstandings and disputes are settled amicably. It would seem, I believe, that the reasonable license fee that is charged is, indeed, a small amount for such a valuable service.

Perhaps it should be pointed out here that PACA serves every factor trading in the commodities covered by the act, and neither

by design nor practice is it of special benefit to any one group of operators.

My authority for appearing here in support of H.R. 5023 is a resolution adopted by the United Fresh Fruit & Vegetable Association at its annual convention in New Orleans, January 26, 1961. This resolution was endorsed unanimously by this association's advisory board which acted upon the recommendation of the PACA-Industry Conference Group which has been studying this problem since the middle of 1958. The industry conferees unanimously approved the substance of this bill at their meeting in New Orleans on January 20, 1961. It may be of interest to the committee to know that the Industry Conference Group is composed of approximately 25 industry members engaged in various activities including shipping, wholesaling, and retailing. In each category, there are representatives of the small and large firms and each, I believe, understood thoroughly the objectives of the conference group. The Department of Agriculture has been meticulous in seeing to it that reports of all the conferences have been sent to all members of the group. As case in point, on April 24, 1961, a complete report was sent to all of the conference members who attended the New Orleans meeting, as well as to all who requested a report. I call this to your attention, gentlemen, because I thought you would be interested in learning of the great care that the Department of Agriculture has taken in soliciting the suggestions and recommendations of persons who operate their businesses under the Perishable Agricultural Commodities Act.

In urging your favorable action, I would like to repeat a statement that was made early in PACA history—a statement, which I believe, not only applies today but will be applicable through the ages and that is this: "PACA says thou shalt not steal and thou shalt not lie." This would not seem to burden unduly any businessman.

MR. GRANT. Thank you. That is a very good motto, and I take it from your statement that the United Fruit & Vegetable Association is for this legislation 100 percent?

MR. RAINS. Yes; that is true.

MR. GRANT. Thank you very much for your statement.

MR. RAINS. Thank you.

MR. GRANT. Our next witness is Mr. John C. Datt, representing the American Farm Bureau Federation.

We will be glad to hear you now.

**STATEMENT OF JOHN C. DATT, ASSISTANT TO THE DIRECTOR,
WASHINGTON OFFICE, THE AMERICAN FARM BUREAU FEDER-
ATION**

MR. DATT. Mr. Chairman and members of the committee, in the interest of time I will file this statement for the record and indicate that as far as the Farm Bureau is concerned we support the passage of H.R. 5023 and hope it will be favorably enacted at an early date.

As far as our membership is concerned we have many who produce and market substantial quantities of perishable agricultural commodities. As producers they are not directly registered and licensed under the act, but they do have a vital concern in the marketing

practices that occur in the handling of their products as they move to market.

Over the years we have supported and worked with the fruit and vegetable industry to see that the Perishable Agricultural Commodities Act has been kept up to date.

We understand the amendments that are proposed are designed to bring it more up to date. Therefore, we urge this legislation be enacted.

Thank you.

MR. GRANT. Without objection your statement will be made a part of the record and the committee is glad to receive the recommendations of the American Farm Bureau Federation.

(The statement referred to is as follows:)

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION PRESENTED BY
JOHN C. DATT, ASSISTANT TO THE DIRECTOR, WASHINGTON OFFICE

We appreciate this opportunity to present the views of the American Farm Bureau Federation on the proposed legislation to amend provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

We have a particular interest in this legislation because many Farm Bureau members produce and market substantial quantities of perishable agricultural commodities. As producers of many of the perishable agricultural commodities, they are not directly regulated by the provisions of the Perishable Agricultural Commodities Act. However, they have a vital interest in the act because as producers they are concerned about the practices governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. The kind and type of marketing rules that exist are very important to producers.

The Perishable Agricultural Commodities Act provides for the establishment of certain rules and regulations governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. We have been vitally interested in these rules and regulations and have worked with the fruit and vegetable industry on several occasions to see that changes have been made in the act so that it meets our current marketing conditions.

Under the rules and regulations of the act producers are provided with a certain amount of protection in the marketing of their products. They have the assurance that the practices that occur at later stages in the marketing and distribution system will not be abusive and harm the handling of their produce.

The proposed amendments to the Perishable Agricultural Commodities Act are designed to bring the act up to date. In September 1960, the American Farm Bureau Federation board of directors recommended that farm bureau support amendments to the Perishable Agricultural Commodities Act to include the following points:

"(a) A clear-cut basis for relicensing or employing individuals who have lost their license or who have otherwise violated the Act;

"(b) An opportunity for hearing if damages claimed exceed \$1,500;

"(c) A general reports provision to enable closer appraisal of trade practices;

"(d) A provision to withdraw Perishable Agricultural Commodities Act funds from support of the Export Apple and Pear Act".

It is our understanding that the proposed legislation includes these as well as other changes. We, therefore, support the passage of this legislation. We hope that it will be given early favorable consideration.

We appreciate the opportunity of presenting the viewpoint of Farm Bureau members on this matter.

MR. GRANT. Are there any questions?

MR. JENNINGS. Would you favor the present proposed license fee increase or would you favor an alternate approach that would assess supplemental fees for each outlet?

MR. DATT. Of course, you understand, Mr. Jennings, most of our members are producers; and, therefore, are not directly licensed under the act.

I would say as far as we are concerned, I think our folks are satisfied with the present system of licensing and the basis for assessing the fees. Therefore, I think it would be fair to say that we would support the continuation of the present system so far as the assessment of fees is concerned.

Mr. JENNINGS. Are you in favor of an increase or the present system?

Mr. DATT. My reference to the present system I am thinking in terms of where you have a flat fee, this would, also, include what increases are necessary in order to finance the act.

Mr. JENNINGS. Thank you.

Mr. HAGEN. In your statement you referred to general reports provision.

Mr. DATT. Yes.

Mr. HAGEN. Is that in this bill?

Mr. DATT. As you will note, this is a statement of our board of directors which was adopted last September, and this was in connection with the proposed amendments that were before our board at that particular time. At that particular time there was a general report provision in the proposal. That has since been eliminated.

Mr. HAGEN. What kind of reports were those?

Mr. DATT. As I understand it this general report provision as was in the earlier proposal provided for reports from the people who were licensed with more detail as to the type of transaction they were carrying on. I think in the subsequent discussions by others who were more involved than we were in this, it was agreed that this general report provision, probably, was not necessary.

Mr. HAGEN. I think that it might be very valuable to have that.

Mr. DATT. I might say that we felt that way ourselves, but there were others who did not share this point of view and it was, subsequently, not included in the proposed legislation.

Mr. HAGEN. Do you have any objection, Mr. McIntire, to having such a provision?

Mr. McINTIRE. The matter of general reporting was the subject of discussion at various conferences between the Department of Agriculture and the fresh and frozen fruit and vegetable trade. The fact that from these conferences there was a decision not to include it as a part of these amendments would seem to me ample reason to leave it out at this time.

Mr. TEAGUE of California. Is it fair to say that the amount of the license fee, as established, whether it is on a fixed or on a variable basis is not a matter of particular materiality to the American Farm Bureau Federation?

Mr. DATT. I think that that is correct, sir; I think that is correct.

Mr. TEAGUE of California. Thank you.

Mr. GRANT. Thank you very much for your testimony.

Mr. DATT. Thank you.

Mr. GRANT. The committee stands adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12, noon, the committee was recessed, to reconvene at 10 a.m., Thursday, August 10, 1961.)

PERISHABLE AGRICULTURAL COMMODITIES

THURSDAY, AUGUST 10, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, at 10 a.m., pursuant to recess in room 1310, New House Office Building, Hon. George Grant (chairman of the subcommittee) presiding.

Present: Representatives Grant, Jennings, Matthews, Inouye, Harding, Teague of California, Findley, and Beermann.

Also present: Representatives Hagen and McIntire.

Christine S. Gallagher, clerk; Hyde H. Murray, assistant clerk; and John Heimbürger, counsel.

Mr. GRANT. The subcommittee will come to order.

Our first witness is Mr. A. E. Mercker, executive director of the National Potato Council. We shall be glad to hear from you now.

STATEMENT OF A. E. MERCKER, EXECUTIVE DIRECTOR, NATIONAL POTATO COUNCIL

Mr. MERCKER. Mr. Chairman and members of the committee, the National Potato Council is appreciative of the opportunity to present this statement on the proposed legislation to amend the provisions of the Perishable Agricultural Commodities Act of 1930. The act deals with the practices in the marketing and distribution of fruits and vegetables.

As potatoes are the major vegetable commodity, the potato industry is vitally interested in these amendments. Formerly nearly all potatoes were marketed in the fresh form or for seed purposes. The upsurge in process has been tremendous so that now more than 25 percent of the crop produced is processed for food purposes. The remainder is used largely for food in the fresh form, seed, and some is lost through shrinkage and waste. The producers, handlers, processors, and receivers have operated under the Perishable Agricultural Commodities Act with a minimum of inconvenience. The act has been most helpful.

The Department, in its very fair consideration, has discussed with members of the perishable commodities industry, their problems and the need for amendments to improve the administration of this act. In this connection, the U.S. Department of Agriculture appointed our past president, E. Perrin Edmunds, C. A. Powers & Co., Fort Fairfield, Maine, J. Abney Cox, H. L. Cox & Sons, Princeton, Fla., as conferees, and myself as an observer at these meetings.

The problems in connection with the act were discussed at the National Potato Council's 11th annual meeting at Chicago, Ill., in 1959, and the following resolution was passed:

The council commends the PACA for its effort and the helpful work which has been done for the industry as a whole, and asks that the program be strengthened and continued. The council recognizes and endorses the actions which have been taken to date for improving the Perishable Agricultural Commodities Act.

Therefore, we wish to go on record as approving H.R. 5023 as proposed.

Mr. GRANT. Thank you very much for your statement.

Mr. McIntire?

Mr. McINTIRE. May I, as a member of the full committee, but not a member of the subcommittee, express to Mr. Mercker my appreciation for his appearance here this morning. From your long experience in the Department of Agriculture dealing with fresh fruits and vegetables this act has been very helpful, has it not, in establishing some vehicle whereby appropriate consideration could be given to the integrity of contracts and the fulfillment of contracts on the part of the local shipper and receiver?

Mr. MERCKER. The potato industry and the perishable industry has always favored such action.

I dislike to tell you how far back I go, Mr. McIntire, but I happened to have been in the produce business before World War I. And when Mr. Hoover came in as Food Administrator, he found all of this chaos in the industry, he said, "Well, we have got to set up arbitration committees." And he did that. And Mr. Percy Miller, of Albert Miller & Co., was a head of one big part of it. They were the biggest potato handlers in the country at that time.

And then Mr. Hoover said, "We need additional things. We need standards."

That started the Fresh Fruit and Vegetable Inspection Service. And from then on it grew.

After World War I, why the industry got into difficulties. Inspection grew. We had the standards, but then we did not have these arbitration approaches except through expensive legal procedure. This has practically all been eliminated by a very smooth functioning of their handling of it now.

I recollect correctly, it has only three, possibly four folks handling it. It started in with Mr. Truman, and then Mr. Curry and now Mr. Grange.

Mr. McINTIRE. Thank you.

Mr. GRANT. Thank you very much for your statement.

Mr. MERCKER. Thank you.

Mr. GRANT. Our next witness is Mr. Henry J. Bison, general counsel for the National Association of Retail Grocers of the United States. We will be glad to hear you now.

STATEMENT OF HENRY BISON, JR., GENERAL COUNSEL, NATIONAL ASSOCIATION OF RETAIL GROCERS OF THE UNITED STATES

Mr. BISON. Mr. Chairman and members of the committee, we are grateful for this opportunity to express our views on H.R. 5023. This bill, authorizing an increase in the annual license fee under the

Perishable Agricultural Commodities Act from \$25 to \$50, is of great concern to our members.

The National Association of Retail Grocers of the United States (NARGUS) represents local food store operators across the Nation. The association is a federation of over 200 State and local associations of food retailers. Three quarters of NARGUS members are located in towns and cities of less than 100,000 population. Eighty percent are affiliated with voluntary or cooperative buying groups.

First, let me make it clear that we are here seeking an amendment which provides after line 4 on page 2 of the pending bill as follows:

(11) No person buying any perishable agricultural commodity solely for sale at retail shall be considered as a "dealer" in respect of any such commodity in any calendar year: *Provided*, That not less than 90 per centum of his purchases of such commodity in such year are from one or more licensed wholesale suppliers. For the purpose of this subsection, the amount of such purchases shall be determined on the basis of net invoice cost to the retailer.

The purpose of this amendment is to exempt from coverage under the Perishable Agricultural Commodities Act those food retailers who purchases 90 percent or more of their fresh and frozen fruits and vegetables from one or more wholesalers licensed under the act. Such wholesale suppliers include independent service wholesalers selling fresh produce to retail customers, frozen-food wholesalers, cooperative, and voluntary groups selling fresh or frozen fruits and vegetables to retail distributors.

At present, food retailers buying their fresh and frozen fruits and vegetables from wholesalers are nevertheless required by the Department of Agriculture to have a license under the act when they purchase 1 ton or more in weight per day on at least 21 days in a calendar year. Under the act, each purchase must be in interstate or foreign commerce. But the Department of Agriculture applies the act to retailers buying a commodity that has at any time moved across a State line as being in interstate commerce, even though the retailer made the purchase from his wholesaler in a purely local transaction.

The proposed amendment would not exempt large retailers who perform the wholesaling function in the purchase of their fresh and frozen fruits and vegetables. Such retailers purchase a large part of their produce requirements directly from producing areas for shipment to their central warehouses. In so doing, they bypass the wholesale markets where their stores are located.

According to a recent survey made by USDA's Agricultural Marketing Service, 26, percent of all receipts of fresh fruits and vegetables in 23 leading terminal market areas of the country are delivered directly from producing areas to central warehouses of large-scale food retailers. These receipts do not pass through wholesale markets.

In 10 market areas of Cleveland, Cincinnati, Detroit, Chicago, Louisville, St. Louis, Kansas City, Minneapolis-St. Paul, Dallas, and New Orleans, 32 percent of total receipts of fresh fruits and vegetables during the period September 1960 and March 1961 were delivered direct from producing areas to warehouses of large-scale food retailers.

Retailers exempt under the proposed amendment would be required to purchase at least 90 percent of their requirements from licensed wholesalers. They would therefore make the vast percentage of

their purchases from wholesale suppliers licensed under the act. Retailers having appreciable dealings with growers, growers' agents, commission merchants, and terminal markets would not qualify for the exemption.

We believe that the proposed amendment is not in conflict with the purpose of the Perishable Agricultural Commodities Act. The law was primarily designed to protect grower, shippers, and terminal receivers of fruits and vegetables against unwarranted rejections and failure to carry out contracts.

It can hardly have been the intent of Congress in passing the Perishable Agricultural Commodities Act to provide machinery for the enforcement of contracts made between produce and frozen food wholesalers and their retail customers. In the event of failure on the part of a retailer to pay his bill, or to live up to his contract with his wholesaler, there is certainly no need for Federal control or regulation. And if the Government does so in the case of a sale of fresh or frozen fruits and vegetables, then the same principle of Federal intervention would seem to apply with equal validity to sales of meats, dairy products, and many other articles or commodities sold in a food store. There is no justification for the Federal Government concerning itself with the enforcement of contracts involving the sale of fresh or frozen fruits and vegetables between a wholesaler and his retail customer.

Retailers purchasing 90 percent or more of their fruits and vegetables from licensed wholesalers in purely local transactions were not the concern of Congress when it passed the act 31 years ago. These retailers are not large direct buyers from producing areas. They are not direct receivers of shipments from producing areas.

If there is a dispute over a shipment between a retailer and a wholesaler, both the buyer and seller are quite capable of adjusting their disagreement without the intervention of the Federal Government. Furthermore, the size of a claim that might arise in such a situation would ordinarily not justify the expense of a Federal inspector and processing the case through the procedures provided.

There is no question that wholesalers rarely—if ever—file complaints under the act against their retail customers. In fact there is some question about the lack of complaints filed by shippers or terminal market operators against large chain buyers. This point was discussed at a conference with fresh fruit and vegetable industry leaders and officials of the Department of Agriculture in 1958. The following comment is taken from a report of this conference proceeding:

The question is whether or not the scope of the act is now adequately led into a lively and extensive discussion of unwarranted rejections by chainstores and other large buyers. It was pointed out that, because PACA complaints usually are not filed against such buyers, the application of the act in this respect is almost entirely confined to other dealers, commission merchants, and brokers. As stated by one industry representative, big buyers and chainstores get away with rejecting shipments when they do not want them, but the small buyers have to take the shipments or otherwise complaints under PACA will be filed against them by the shippers. It was recognized that when the parties to such transactions do not complain, even though they are unhappy with a particular rejection, then USDA has no specific basis for knowing of the alleged violation and, consequently, does not enter into the matter. Industry representatives all acknowledged that the complaints and threatened complaints against such large buyers are practically nonexistent because the individual shipper or terminal market operator believes that he cannot take the risk of alienating such customers even though he might be successful in forcing them to accept the particular shipment in question.

If, as seems to be the case, many shippers and terminal receivers are reluctant to file complaints against large chain buyers, it is difficult to see the justification for licensing food retailers who purchase most of their requirements from licensed wholesale dealers. What benefit such retailers receive for the \$25 annual license fee they now must pay, or the \$50 proposed in the pending bill, is hard to imagine.

May I add this comment, in departing from my statement; yesterday, a representative of the Department of Agriculture testified, I believe, that many small operators receive the greatest amount of benefit and protection from this law, because large firms are in a stronger position and can employ attorneys to defend themselves. This position was, also, taken by another witness, the United Fresh Fruit & Vegetable Association. The statement was made that the small licensee should be more interested in the protection he is afforded under PACA than the larger licensee.

Gentlemen, as a representative of these retailers, we are not asking for such protection. We represent them. Our members, our retailers are not asking for such protection. So it hardly seems reliable evidence to have someone on the outside tell us that we need this law, that we do not know our own business.

We do not need it, and we do not want it.

I may say, also, that there seems to be some inconsistency in the position taken, both by the Department and by some of the proponents of this legislation, in that they, also, argue that it is only the large retailers who are covered. The Department witness yesterday testified that over 95 percent of all single unit retail stores are now exempt from the PAC Act, and the remaining 2 or 3 percent, which are subject, are virtually all supermarkets. Well, now, you cannot have it both ways. Either the larger retailers are only covered under this law, or the small ones are covered and they need protection. It is inconsistent to argue both ways.

The plain fact of the matter is that retailers relying on licensed wholesale dealers for the vast percentage of their fresh and frozen fruits and vegetables should not be licensed under the act at all. Such application of the law serves no useful purpose at all.

Enforcement of contracts between retailers and wholesalers is not a proper function of the Federal Government. The Department of Agriculture has more than enough to do in meeting its responsibilities to assist the advancement and development of American agriculture in these unsettled times, without wasting its resources by attempting to license and regulate thousands of retailers in the purchase of perishable fruits and vegetables from licensed wholesalers.

Imposition of the licensing provision of the act on retailers purchasing 90 percent or more of their fruits and vegetables from licensed wholesalers constitutes a hardship on such retailers. In 1930, when the act was originally passed, the annual license fee was \$10. In 1950 it was raised to \$15. Six years later it went up to \$25. Now the proposal is to authorize a 100-percent increase to \$50. Undoubtedly, in a few years the fee will need to be raised again.

Another factor of considerable concern is that every person, firm, or corporation licensed under the act pays the same annual fee. A food retailer licensed under the act who purchases as little as \$20,000 worth of fresh fruits and vegetables a year is required to pay the

same fee as a large shipper handling many millions of dollars worth of produce every year. A large retailer with hundreds of supermarkets pays the same license fee as a small-store operator.

Another hardship on independent retailers is that the use of weight of purchases for the purpose of determining coverage under the act makes it difficult for many to avoid violating the law. It is only when a retailer purchases 1 ton or more in weight per day on 21 days in a calendar year that the law requires him to have a license. It is hard for many retailers to know when the level of their operations requires a license. When they fail to apply for a license through inadvertence, the Department says it will consider payment to cover the past 2 years of operations as constituting satisfactory settlement of their past liability under the act.

This means that thousands of food retailers who do not now have a license may be required at some time in the future to pay an initial fee of \$150 (\$100 in accrued fees for 2 years of operations and \$50 for the year in which the retailer applies for a license) if the license fee goes up to \$50.

There are food retailers presently covered by the act who have never applied for a license. In a study made for the Department in 1955, it was conservatively estimated that 7,550 independent grocery and combination store firms were subject to license under the act. In 1959, there were only 2,787 retailers (including chains) licensed. If 200 of these are chains, it leaves roughly 2,587 independents licensed in 1959 out of a potential of 7,550, according to the study made for the Department. In effect, if these figures are correct, there are at the very least 5,000 independent food retailers in the country who could be forced to pay an initial license fee of \$150 plus \$50 per year thereafter if the pending bill is approved in its present form.

The Department follows the practice of contacting retailers by mail and suggesting that they file an application for a license (which is attached to the letter the retailer receives) if they are covered. But the act does not apply unless they buy fresh or frozen fruits and vegetables that originate from out of State, aggregating 1 ton or more during a day, or any single transaction of a ton or more during a day, or any single transaction of a ton or more, and have more than 20 such transactions in a calendar year.

This method of determining coverage is enormously difficult for retailers. They either need to spend a great amount of time, money, and effort checking their purchase records, or pay the license fee demanded. And since weight of each purchase—as well as origin of each commodity—and the aggregate weight of both fresh and frozen fruits and vegetables purchases per day are all factors which determine coverage, it frequently happens that the retailer's records are not at all adequate to determine coverage.

In such letters sent by the Department to retailers the following statement is made:

If your business comes within the provisions of the act, you should complete the application and forward it to this office together with the \$25 annual fee. If you have been operating subject to the act without a license and the violation has not been willful, you may settle your license liability by paying the fees that accrued during the period of such operations. These fees are to be computed using the table on page 2 of the application.

Because of the "20 transaction exemption," it may not be feasible for some retailers to determine when their purchases of fruits and vegetables first

reached the level to require a license. If this is true in your case, and you have been operating more than 2 years, you should furnish on page 3 of the application a statement of your inability to determine the date you first became subject to license. You should answer question 13 by stating, "at least 2 years." You may then settle your license liability for past operations by paying \$50 plus \$25 for the current fee. If you have been operating for less than 2 years, it is probable that your records will show when you became subject to license.

If you believe that you are not required to have a license, please give us your reasons.

In view of the penalties for operating illegally without a valid license, this matter should be given your prompt attention.

Consider for a moment what practical chance many retailers receiving such a letter as this have in showing that they are not required to purchase a license. In most instances they have never heard of the Perishable Agricultural Commodities Act, and never imagined that a Federal license was necessary to operate a food store much less understand the complex method by which coverage of retailers under the act is determined.

Our plea is certainly not one based on opposition to the basic purpose of the act. Neither do we oppose the pending bill except as it fails to carry out that purpose.

Application of the license provisions of the act to retailers buying 90 percent or more of their fresh and frozen fruits and vegetables from wholesalers licensed under the law serves no useful purpose and imposes an unjustifiable tax on thousands of retail businesses.

We respectfully urge that the proposed amendment is reasonable and not in conflict with the basic purpose of the act, or its efficient administration.

We ask that the pending bill be amended as we have recommended. Both justice and good sense require this action to secure sound legislation in the matter.

Gentlemen, I have some additional comments I would like to make which depart from my statement.

I attended the hearing yesterday morning and listened to the testimony with respect to uniform versus variable fees. I would like to say that, so far as I am able to determine, the Department of Agriculture says it is not opposed to the principle of the variable fee, if the fruit and vegetable industry favors such an arrangement. I would hope the Department would have some independent judgment on this matter. Certainly, it seems that the Department has a higher duty—a duty to Congress and others—which goes beyond any duty that any member of the industry would have. It, certainly, has a responsibility for the administration of this law in accordance with the intent of Congress. Of course, our point of view is always outvoted within the industry, because we are the lone dissenter within the industry councils.

This, we think, is one of the things wrong today, that is, the minority interest within the industry is given very little opportunity to present its case, except when the matter comes before Congress and then we are given this right. We appreciate the opportunity of being here today.

There have been suggestions made for supplemental fees based on each outlet operated by the licensee. I listened to this testimony yesterday from the Department representative.

I would like to make the following comments with respect to that suggestion.

First, our basic objection to the licensing fee is that we believe the Federal Government should not license retail grocers who purchase the vast bulk of their produce and frozen foods from a local wholesale supplier licensed under the act. That is our basic position. We do not think it is sound national policy for the Federal Government to go that far regulating local transactions licensing retailers who acquire their merchandise from wholesalers.

And if it does so in the case of fruits and vegetables, then could it not some day be applied to meats? Meats are perishables. Or to dairy products, or even bread, which is a very perishable product?

This is the only license—the only Federal license of its kind, gentlemen, that applies to a food retailer. There is no other example or precedent for this.

There is an alcoholic beverage control license which is a Federal license. Retailers who deal in alcoholic beverages have to have a Federal license, but that is for the purpose of administering the alcoholic beverage tax, a Federal tax. It applies to alcoholic beverages. I do not believe that you can find a similarity between fresh fruits and vegetables and alcoholic beverages.

So this is the only license that has ever been applied to the retail level, to the retail grocers. And we are very much afraid of this precedent, because if the Federal Government can regulate a local retailer in common, everyday transactions, where is the Federal Government control over local transactions ever to stop? And could they not apply the license even to the sale by a grocer of fresh fruits and vegetables to the consumer? It is only one small step further. And this is what frightens us. So our basic objection here today is one of principle and not of dollars.

We think, again repeating ourselves, that it is not good policy for the Federal Government to go this far. And some time or another Congress is going to have to take a firm stand against encroachment of Federal power over local transactions.

We have taken a firm stand here. We will always oppose this. We will continually oppose it. This is our position.

Going further, the object of our effort here today is to secure our freedom, to retrieve our freedom from this Federal licensing control. It is not our purpose today here to impose a higher license fee on any other member of the industry. We are not seeking a higher license fee on the large chains, because that will not satisfy the basic principle of our objection here. It will have very little effect on us insofar as our competitive position is concerned whether a large chain pays \$50 a year or \$1,000 a year. It will not make a great deal of difference to our members in their competitive position in the market.

We are firm and resolute, and we do not believe we can compromise our basic principle. We think it is wrong for the Federal Government to regulate local intrastate transactions.

Let me make one other comment. If the fee were a variable fee, based on the number of outlets, it would substitute one unfair basis for another, because an outlet in the retail food and distribution business can have a sales volume under this act of \$200,000 a year and it can go all the way up to \$16 million or \$20 million under one roof. A food store can be very small, as I say, with annual sales amounting to very little, or it can be a tremendous supermarket. We believe a retailer

who might have 10 very small establishments, drive-in establishments, if you please, each one with very small annual sales and very small annual purchases of produce, should not be taxed based on the fact that he has 10 units, whereas his competitor, another retailer in the area, might only have 1 unit and have more sales with that 1 unit than the first retailer did with 10 units. So that a store as such is not a very good criteria, and we think that it would result in unfairness in many instances within the industry.

The uniform fee for all retailers regardless of size, gentlemen, is a symptom of our problem. It is not the cause. The cause of our problem is the fact that the Federal Government is licensing a local intrastate transaction. We do not believe that should be permitted any longer.

It is quite true that this is the first time we have appeared before this subcommittee, or any subcommittee of the Congress and this is our responsibility. We should have appeared before.

I know our position here today is not popular with the industry. I do not know whether we will have the ability to succeed, but I do know that the strongest case we have is the logic of our argument and the principles which we are asserting. We are resting our case on that basis.

That completes my statement.

I just want to say that I appreciate tremendously, on behalf of our many thousands of members across the country, the opportunity of being here.

Mr. GRANT. Thank you for your statement. I am sure that there are questions.

Mr. Jennings?

Mr. JENNINGS. First, I want to compliment the witness on his very complete and sincere statement. I, certainly, have no quarrel with you on the basis of your presentation, but going beyond that for just one moment, do you not feel that a license based on the number of units of outlet would be an improvement over the present mode of operation, that is, the present method of licensing?

Mr. BISON. I really do not know, Mr. Jennings, because it takes some study to assess the problems that would arise from it. I will tell you the reason why.

The food distribution industry, both at the wholesale and the retail level is very complex. It is hard to generalize, because there are so many different ways of doing business.

I would hesitate to say whether it would be better or worse right now. I think it requires a considerable amount of study if any change is to be made.

I would urge this subcommittee not to rush this legislation through, because there are many people in this industry today whose interests are involved and it is going to take some time to find out what effect this would have on their interests. This is a very large industry, as you well know.

So I would say that if changes are going to be made, act with caution and with study and consideration.

Mr. JENNINGS. In effect, you are saying that you think the graduated scale, based on the amount of business, the volume of business transactions, would be more equitable?

Mr. BISON. I do not know whether it would be or not. The Department witness raised one objection yesterday to that, that is, there would be more forms required from business.

Mr. JENNINGS. I realize that would be true as to the administration of this act, but I was not going into that question. I was going into the subject—

Mr. BISON. You might say, too, that there is another alternative, Mr. Jennings, to this, that is, to do away with the license fee entirely and make it an undertaking under the general appropriations of the Department. That is an alternative.

Mr. JENNINGS. Perhaps I should direct this question to the Department. How many people are employed in the enforcement of this act?

Mr. BISON. I do not know—I would not be competent to say. I might say this. Nothing that we have said here is personal with these people. We have the greatest respect for them. It is that we disagree on principle.

Mr. JENNINGS. Do you know whether or not they carry on this work with other duties, or whether they do this exclusively?

Mr. BISON. I had better not answer that question because I just do not want to answer unless I know the facts, which I do not.

Mr. JENNINGS. You give one example here, I notice. You state:

In 10 market areas of Cleveland, Cincinnati, Detroit, Chicago, Louisville, St. Louis, Kansas City, Minneapolis-St. Paul, Dallas, and New Orleans, 32 percent of total receipts of fresh fruits and vegetables during the period September 1960 and March 1961 were delivered direct from producing areas to warehouses of large-scale food retailers.

That is on pages 2 and 3 of your statement.

You pick there a period which would appear to me as being one in which fruits and vegetables, that is, fresh fruits and vegetables, flow less to the market and the retail outlets than in any other period. That is during the winter months. Why not use from March 1960 to September 1961?

Mr. BISON. I think that the same relative conclusions could be drawn regardless of what period is selected. The amount of the receipts would vary, that is, in volume and the total amount. I do not think that the percentage would vary. I think that large-scale buyers follow the same practice generally, in all seasons of the year.

I might, also, add that the period reported on is taken from a report made by the Department of Agriculture. I thought that it was important to bring this to your attention, to show that as time goes on we will have more and more direct shipments. And that if you stop licensing these retailers you will encourage them to deal with their wholesalers, instead of bypassing the wholesale markets.

Mr. JENNINGS. The only point I wanted to get to was why do you want to encourage the retailer to deal with the wholesaler, rather than to deal in a direct manner, if he so desires. In effect, what you would be doing is that you would be encouraging, under your amendment, an individual retailer or the retailers, to deal with the wholesale house that happens to be licensed under the act, rather than to deal direct. What is the advantage? Why would you want to encourage that?

Mr. BISON. We are not particularly interested in encouraging or discouraging that. Our principal concern is that, again stating the principle of our objection, that we do not think that the Federal Government should license a local retailer in local transactions. If he

buys in interstate commerce—if he goes to the State of Florida, for example, and orders a shipment of fresh produce, that is an interstate transaction and we think the Federal Government, certainly, has every right to intervene in that kind of a transaction. So it is the principle that has motivated our position here.

Whether it is good business for a retailer to buy direct, or whether it is good business for him to buy from the wholesaler is determined on the facts of each individual situation. We would not be able to make a generalization.

Mr. JENNINGS. The mere presence of this law, and I am asking you this question for your position, that of the independent retailers—has made for a better relationship between the retailer and those he purchases from, whether it be direct or whether it be from the wholesaler, because it would appear to me that he has some protection and he is going to get exactly what he orders and what he contracts for—would not the mere fact that we have this law, even though, as you have pointed out, there have been very few complaints, be of help, for example, I, as a larger shipper or wholesaler or commission merchant or broker, knowing that you as a small retailer have that privilege—would that not have its effect in carrying out the intent and the spirit of good business relations?

Mr. BISON. Let me answer your question in several parts.

First of all, I have been associated with and representing this organization now for about 10 years, and I have never heard any member of our organization ever having filed a claim or making an inquiry under PACA. That is not to say it has not happened. I am not alleging that.

Secondly, our position is as stated to you today, which was unanimously adopted at our convention in Philadelphia last June. Every one of our members, every one of our State association executives heartily support it. There was not one dissenting vote in this association of 40,000 or 50,000 members.

Thirdly, if a retailer receives a shipment from his wholesaler and it is not up to standard, he is going to deal with his wholesale supplier himself. He can quickly make his views known without any Federal interference or any Federal regulation. I doubt very much, except in rare situations, that he would even think of going to a PACA office and having a complaint filed against his supplier. He can handle the matter better with his own supplier. If people who sell us goods do not do what we want, we have means for controlling that, as long as we have competition. That is why we want to preserve competition.

Mr. JENNINGS. There is no lack of competition in the wholesale fruit and vegetable business, is there?

Mr. BISON. There is no lack of competition in the food industry as such.

Mr. JENNINGS. A great deal of this bill deals with the responsibility of the commission merchant, in defining the terms. It also deals, as I understand it, with the relicensing of those in the produce business. You have directed your testimony to that portion of the bill. I assume that you would have no objection to clarifying the language of that portion of the bill?

Mr. BISON. I am glad that you asked me that question. We have no objection to any of those provisions in the bill, for this reason: We

never have any complaints filed against our members. There may be some exceptions that I do not know about, but they must be very rare. Our members never file any complaints. They do not have anything to do with this law except that they have secured a license and they have to pay their \$25.

So far as the rest of the law is concerned we do not know anything about it. We have never had anything to do with it. It is that irritating license that comes up every year. It is very irritating when the retailer gets a letter which says, "You have been under this law since you have been in business and you have to figure how many tons you have bought per day, and where it came from, and so on and so forth and you have to give us \$75 and then pay \$25 from here on out."

We have no objection to the bill. If it would please the subcommittee to adopt our amendment, we would support the bill.

Mr. JENNINGS. In other words, what you are saying in effect is that the only reason and the only benefit that is derived by having these retailers who purchase 90 percent of their commodity from a wholesale outlet who is licensed—the only thing that you contribute is the license fee?

Mr. BISON. Precisely.

Mr. JENNINGS. I think that is all I have. Again, I want to compliment the witness, because I think you have given us a very good view of your position. Frankly, I think I can say that while I do not agree with it in its entirety, I agree with most of it. I do not know whether we can go as far as you would like to have us go. Certainly, on this license feature, if we are going to get something that is more equitable than the present one is, that is what we need to do.

Mr. FINDLEY. Mr. Chairman, first of all I feel that I have reached a new plateau here today. I have only been a Congressman for 6 months, and here I am a senior Republican on this subcommittee [Laughter.]

I want to compliment you on your statement. You, certainly, touched on some topics that are dear to my heart, particularly when you speak about the unnecessary encroachment of the Federal Government on responsibility that should be reserved to the State and local governments.

I am wondering what the effect of your amendment might be on competition in the wholesale business. I am somewhat of a merchant myself. I am a newspaper publisher. I deal with many independent grocers. It is my observation that many of them deal with several different sources for fresh fruits and vegetables in their purchases.

In order to get the exemption under this act, by dealing with one source for 90 percent of their purchases, would that not tend to reduce competition in the wholesale business?

Mr. BISON. Our amendment refers to one or more licensed wholesale suppliers.

Mr. FINDLEY. I misunderstood your amendment then.

Mr. BISON. Yes.

Mr. FINDLEY. It is one or more?

Mr. BISON. One or more.

Mr. FINDLEY. Providing that 90 percent of their business is with firms that have licenses?

Mr. BISON. The wholesale supplier is not licensed and this would count toward purchases that might put them under the act.

Mr. JENNINGS. I cannot imagine any wholesaler who would not come under the act because of the ton limitations, that is, the tonnage limitations—it would not be a very large wholesaler if he did not come under the act.

Mr. BISON. I am sure that the wholesalers would be licensed. I cannot imagine that they would not be. If they were not licensed they would be in violation.

Mr. FINDLEY. Why does your association not oppose this problem from the interstate commerce context rather than the 90 percent volume basis—why not provide that the retailer who has his sales within the confines of one State would be exempt?

Mr. BISON. For this reason the fact that he is operating in one State would not necessarily mean that he was not engaged in interstate commerce. For instance, suppose that this retailer had a truck and he sent the truck to a producing area in another State and said, "I want you to bring back this shipment of produce for me." I think that would be interstate even though he operated in one State. We are trying to be as fair as we possibly can about this. We leaned over backwards in proposing our amendment. Ninty percent is a very high percentage. Some people have said, "You are really more strict than you should be," but we realize that we have a tough road and we want to show our good faith in the matter.

I went back to a congressional date 31 years ago and read all of that—and this is my own opinion—I would say that the purpose of the act was primarily one of protecting growers, not exclusively, but primarily of protecting growers and grower agents, because buyers were ordering shipments of commodities and they would arrive and they would have some reason for not wanting them. They would say, "This does not meet the specifications. I reject the shipment."

Let me emphasize, I am not saying that this is the sole purpose of the act at all. This is one of the purposes—one of the primary purposes and, from our own point of view we see a great deal of wisdom in the Federal Government intervening in the situation where this could be a real problem where growers were finding shipments rejected for no reason at all.

And we are not opposed to the basic purpose as we understand it of this law.

FINDLEY. The basic purpose then is as you see it to use the license system to enforce contracts?

Mr. BISON. Yes. It is true that receivers have benefited from this law, too. There is no question that the receivers have. Sometimes a shipper will claim that the contract has been met when it has not. So the receivers do get something out of the law.

I think the primary purpose was to protect the grower who could not protect himself. He is in a distant part of the country, shipping a perishable commodity to a buyer many miles away. Congress felt that the grower needs some protection.

To get back to the point where interstate commerce is involved, this law sohuld apply.

Mr. FINDLEY. I, also, get from your testimony you have the feeling that only a third of those who should be under the licensing system actually have a license?

Mr. BISON. May I say this. I was taking a survey made for the Department by a very competent research firm, Neilson. I do not

know the standards by which they conducted this survey. I do not know how accurate it is. I am not testifying that it is either right or wrong, because I have no knowledge of it myself and have not made a study of it.

It must have some credibility, or the Department would not use it. If it is right, 5,000 independent food merchants in this country today do not have a license, and should. My guess, however—and it is only a guess—is that the number is more than that. It is hard to estimate—because of the method of coverage under this law. One ton or more fresh or frozen, per day, 21 tons or more a year. It is hard to estimate how many are covered under that. If one bought twenty 100 pound sacks of potatoes, they would have a ton right there.

The Department witness yesterday stated that only supermarkets were covered—only the large retailers.

First, let me say that we would not be here today if that were so. We are not appearing on this matter just for the fun of it.

There is a great deal of difference in opinion within the industry on how much sales volume a store must have to be called a "supermarket."

The Department has said with some basis, because of the Neilson study that if it does \$350,000 worth of business a year it is a supermarket. Gentlemen, \$350,000 a year is not very much in the food retailing. A very small store can have sales of \$350,000 a year.

Our definition of a supermarket is something much closer to \$1 million, because we feel that a \$1 million operation would be necessary to make the investment in a supermarket pay.

You have to have a high volume to make the investment pay. One cannot make it pay on \$350,000 a year.

So our point is simply this, there are many small merchants, retail food merchants, who are covered under this act and are required to take out a license.

There is a difference of opinion over what a supermarket is. We think that \$1 million is more realistic to define a supermarket than \$350,000. Many small stores, gentlemen, will do a volume of \$350,000.

Mr. FINDLEY. Are there any other precedents for using licensing of stores to enforce contracts?

Mr. BISON. No. I have searched the statute books. I told you I only found one other Federal license proposition.

Mr. FINDLEY. I am speaking of other local governments, too.

Mr. BISON. No, that is not to say that there are not any.

Mr. FINDLEY. Do they use State licensing of retail stores as a lever to enforce compliance of contracts?

Mr. BISON. I know of none.

Mr. McINTIRE. May I say that it might be so in connection with milk marketing orders.

Mr. FINDLEY. Is that part of the Marketing Order Act?

Mr. BISON. I think that we are talking about two different things here. I understand that milk commissions do set minimum prices, and some set the maximum price, but this law provides for the enforcement of a contract.

All we are saying is simply this, again, getting back to our basic principle, we are saying that when a local transaction is involved, the Federal Government should not be concerned with it. It may be that

the State government should be, maybe the local government should be. We do not know. But the Federal Government should not. This is not the proper approach for the Federal Government. The Federal Government has more things to do right now than it can possibly handle.

Mr. FINDLEY. Is the license used to enforce the payment for the milk? Is it used for that purpose?

Mr. McINTIRE. No.

Mr. FINDLEY. That would be going a step further, is that correct?

Mr. McINTIRE. It would, in the context in which you are putting it, but the real context of the PACA is the performance of the contract, not to pay for the commodity.

The real crux is the performance of the contract, to live up to the agreement that you have made. That does involve money, because nobody is in business in this country except for money. The real crux of the PACA is the performance of the contract.

Mr. FINDLEY. I hope that you come back often.

Mr. HAGEN. Mr. Bison, you seek an exemption based on purchases from a "wholesaler" yet you do not define wholesaler. Is there an adequate definition of "wholesaler" elsewhere in the act?

Mr. BISON. The act does not define "wholesaler," unfortunately. I have been concerned about that problem. I think that a good definition of "wholesaler" is one who sells exclusively to retailers and a retailer is one who sells for resale to the consumer. We are talking about the legitimate produce and frozen-food wholesaler who sells to retailers and the voluntary and the cooperative who sell produce and frozen foods to their members—we are talking about those three classifications—and we, certainly, would be anxious to work with the subcommittee in further defining that term if you think it is needed. We are not looking for any back-door escape from this thing.

Mr. HAGEN. I think it might be needed if we adopt your amendment.

Mr. BISON. Let us work on it.

Mr. HAGEN. In your view is the wholesaler by definition one who takes title to the produce?

Mr. BISON. Yes.

Mr. HAGEN. That he sells?

Mr. BISON. Yes; he does take title.

Mr. HAGEN. In other words, by the time the retailer buys from the wholesaler, there has been one complete sale between the producer and the wholesaler. The point I am getting to is that it appears that if the retailer rejected a carload of potatoes, for example, for some reason, this arbitrary rejection would not operate adversely to the man who is growing the potatoes; would it?

Mr. BISON. No; it would not.

Mr. HAGEN. That would be clearly a transaction between the wholesaler and the retailer.

Mr. BISON. It would be. It is the wholesaler's property until he transfers title to the property to the retailer. The means by which this title is transferred is the contract. This is a transaction between the retailer and the wholesaler and nobody else is involved.

Mr. HAGEN. I understand that the broker gets paid for his service. There was one illustration presented by Mr. Grange where a retailer had refused shipment. And there was a broker in this transaction

and the broker never got paid and consequently the growers never got paid.

Mr. BISON. No; it would not involve that. There may be a broker involved before the wholesaler acquires title to the merchandise—we do not know—that is entirely something beyond the scope of what we are talking about.

Mr. HAGEN. I agree with you that this act is primarily for the protection of the grower, say, out in California who is shipping to a market in Boston, Mass., and is in no position to protect himself there.

I think there is a lot of merit in what you say about the relationship between the wholesaler and the retailer. The wholesaler takes the title and is the sole loser if the retailer breaks his contract.

Another question, is it not foreseeable that large outfits could set up a separate wholesaling corporation and thereby avoid coverage under this act if you exempt retailers under the formula you propose?

Mr. BISON. I do not see how. The large operator is going to be engaged in interstate commerce as we all think of interstate commerce. He has a warehouse. He is his own wholesaler. He is integrated. That is where the distinction comes in. He is doing his own wholesaling, has his own warehouse. He has a direct shipment made to the warehouse.

Mr. HAGEN. Of course, you are exempting 10 percent of the transaction by your definition whether or not the deal is with a wholesaler or a farmer.

Mr. BISON. Yes.

Mr. HAGEN. And say that the alter ego, the chainstore runs the wholesaler corporation, and whatever the parent wants for the wholesaler will do. The producer could be imposed upon. Should we not have some criteria to meet that sort of thing?

I agree with you that if you have a clearly independent wholesaler who takes title to the property and then deals at arm's length with the retailer, why that kind of transaction perhaps would not be covered. However, we do not want to weaken the protection for the grower.

Mr. BISON. We certainly do not. That is not our objective either.

If there is any weakness in this proposal, so far as protecting the grower is concerned, we want to know about it, and we would agree to any reasonable proposal on that. I do not believe we have a problem there. You may be right and if you are right, let us correct it—let us correct it so that we do not have the problem, because that is not our purpose.

Mr. HAGEN. Thank you very much.

Mr. BEERMANN. You say that this is your first appearance before the committee. Is your appearance before this committee at this time prompted because of the fear you have of additional Federal controls?

Mr. BISON. In part.

Mr. BEERMANN. In part?

Mr. BISON. Yes, sir.

Mr. BEERMANN. In that light then, is your amendment a compromise rather than the attitude you might prefer not to have this Perishable Agricultural Commodities Act?

Mr. BISON. No; I think it is not a compromise. I think what we are trying to do in our amendment is to assert the principle of our objection; namely, we do not think that the Federal Government should license the retailers who do the bulk of their buying in local

transactions. I do not believe it is a compromise; 90 percent may be a compromise. The reason we use the figure of 90 percent is that we were afraid that some unusual purchase in commerce say, of water-melons or something of that nature may happen only once in a whole year. We did not think that one such small purchase ought to throw them under the act. Something ought to be done for the de minimis transaction. We are trying to avoid the minor purchases of no consequence. That is what we are trying to do. I do not believe it is a compromise.

Mr. BEERMANN. You are in favor of the act; just want to clarify it for the people who have to live under it.

Mr. BISON. Yes.

Mr. BEERMANN. I am glad that you appeared here. Thank you.

Mr. McINTIRE. Mr. Bison, may I join with the members of the subcommittee in expressing my appreciation of your appearance, also.

In looking at the amendment which you propose you use the term "90 percent of purchases," do you mean by that volume or dollar transactions?

Mr. BISON. Dollar transactions, not weight, but value.

Mr. McINTIRE. Am I correct in my understanding that what you are attempting to suggest here is a clarification of the interpretation of interstate commerce? This act has been in effect since 1930. I assume your organization is that old or older. How much has been done to acquaint the retailer with the act in the years past in order that they would understand the law—How much time has been spent giving the retailers some understanding of this act?

Mr. BISON. By us?

Mr. McINTIRE. Yes.

Mr. BISON. We have not spent a great deal of time trying to educate our retailers to apply for a license under this law. When a retailer receives a letter from the Department—or when an inspector comes to his stores and says, "You have got to take out a license," we advise him whether we think he had better pay up or whether he can resist it. We do not affirmatively carry on an educational program. The Department has. You saw the evidence yesterday.

Mr. McINTIRE. The Department has worked the past 3 years or more in conferences with those who come under the purview of the act. Has your association attended these conferences?

Mr. BISON. Yes; we attended the last conference for the first time. This took place in New Orleans in January of this year. That was the first time one of our members was invited. We were glad to cooperate in so doing.

I might say that our member dissented to the proposal for increasing the fee.

Mr. McINTIRE. Did your representative at this conference raise the question of the definition which the department had submitted?

Mr. BISON. I do not know whether he did or not—it is not shown in the summary of the meeting—he might have done it—I do not know that he did.

Mr. McINTIRE. In connection with this definition you feel it should be put on a dollar basis rather than on a volume basis?

Mr. BISON. No; I feel that the coverage as stated in the law now 1-ton or more, 21 times or more a year, ought to remain the same, at least, for the time being, until a thorough study could be made of any

other proposal. We are very fearful of changing the standard on weight until we know exactly what the effect of that change would be. In the case of the retail exemption for purchases from the local wholesaler, this ought to be in terms of dollars.

Mr. McINTIRE. Administratively, it is the responsibility of the Department to make the definition, but you have not defined in your amendment nor have you proposed to the subcommittee a definition. You also make mention of the fact that you did not think this legislation should be enacted. It is my understanding that the legislation has been under consideration for 3 years. You are familiar with the fact that it is a self-supporting operation from a financial standpoint. You are familiar with the fact that the statement was made by the Department that the reserves were virtually used up. Do you think it is necessary therefore to take action promptly on this legislation?

Mr. BISON. I believe that my testimony went to the effect that if there should be any supplementary fee based on outlets or something of that nature where a substantial change is to be made, that it ought not to be rushed because we do not know what the effect will be.

I would say in answer to your question I understand that there is a deficit involved. I do not know whether it would be necessary to act on this legislation this year because of that deficit. I have not seen any evidence to indicate it. I do not believe there has been any evidence introduced before this committee to indicate that action on this bill this year is absolutely essential.

Mr. McINTIRE. That is the information I have. Funds will run out early in 1962.

Mr. BISON. We are not trying to undermine this law or its operation in any way.

Mr. McINTIRE. Do you not think that, in view of the suggestion you made, that it needs clarification on the point of definition? It seems to me that a truckdriver could be a wholesaler—it seems that if he crosses a State line he is in interstate commerce—would it not be better procedure to follow to get financial stability into this program if it is to continue, making authorization for these increased fees and for the committee to take into consideration at a later date some amendments to the act?

Mr. BISON. I simply say this: I do not think it would take very long to define what a wholesaler is. I can give you a pretty good definition right now, as a matter of fact.

Mr. McINTIRE. What is your definition?

Mr. BISON. One, that he sells to retailers and has an established place of business.

Mr. McINTIRE. Would a truckdriver who is buying from a producer, going across State lines, selling direct to a retailer, be a wholesaler?

Mr. BISON. No; not the way we would define it. No; I think he would not have an established place of business. I think that truckdrivers could be cared for by excluding them.

Let me make my point, however. I believe that the definition of a wholesaler could be defined without too much delay and that this matter could be concluded very quickly. There would be no reason to pass this bill and delay consideration of our objection. We think it is fundamental that we have the opportunity right now. We might never get separate legislation through Congress. It is a factor

of great concern to us. This is our best opportunity. We think it is a golden opportunity and we want to seize it.

Mr. McINTIRE. Basically, the proposition you and your association of retailers present is to define interstate commerce question so as to prevent retailers coming within the jurisdiction of the act except to such points you feel that retailer is in interstate commerce.

Mr. BISON. Some stores do.

Mr. McINTIRE. And your amendment also says, "any such commodity"?

Mr. BISON. Yes.

Mr. McINTIRE. Would that mean that you would have to show by records each variety of fresh fruit or vegetable?

Mr. BISON. The "any such commodity," I took precisely from the provision of the act defining a dealer now in section 1(6) where it defines the term "dealer," and such commodity is in the act today and has been in the act for 31 years.

Mr. McINTIRE. Then your interpretation is that this is the total commodity group which is classified as fresh fruit and vegetables or frozen foods?

Mr. BISON. Yes; definitely. It can be 1 commodity that is covered or it can be 10 or 15 or whatever it is.

Mr. McINTIRE. It is the total rather than one particular commodity?

Mr. BISON. Yes.

Mr. McINTIRE. Thank you.

Mr. GRANT. Will you yield to Mr. Jennings? He has to get away.

Mr. HARDING. Yes.

Mr. JENNINGS. Do you know of a counterpart to the PACA on a State level in any of our States?

Mr. BISON. No, but that does not mean that there are not any, because there are many State laws that may go this far. I am not saying that they do not.

Mr. HAGEN. California has laws along this order viz licensing and bonding requirements intrastate.

Mr. McINTIRE. We have a number of States wherein by State law there is a requirement of a bond be put up by the dealer, a vehicle by which the person selling to the dealer is assured of pay in case of default on the part of the dealer. I recall the bankruptcy of a certain concern in New England that was purchasing milk from farmers and was bonded.

Mr. JENNINGS. Did that work satisfactorily, that is, to the satisfaction of the producers?

Mr. McINTIRE. Where a valid bond was in effect—yes. In one State the State official had not required a bond. There the producers did not get their money.

Mr. JENNINGS. Where those conditions existed did they also have Federal licenses?

Mr. McINTIRE. Not in those instances, no.

Mr. JENNINGS. Then should not this be left to the State where it works most satisfactorily, as it did in milk?

Mr. McINTIRE. It is my opinion that in the fresh fruit and vegetable business the PACA has been a very successful proposition.

You would have plenty of problems in vegetables today if you did not have it.

Mr. HARDING. I understand from your statement you object primarily to the interference of the Federal Government in transactions that are purely intrastate, is that correct?

Mr. BISON. That is correct.

Mr. HARDING. Could you tell us of some of these transactions?

Mr. BISON. I can give you an example.

Mr. HARDING. Please do, a specific example that involves a specific set of people or businesses?

Mr. BISON. Let me just say this, I would not be able to name any names.

Mr. HARDING. Could you furnish that for the record? The reason I ask is that we had a Department of Agriculture witness here yesterday who said that in every case they have to determine whether or not it was an interstate transaction—even though the wholesaler or the retailer or both were licensed under PACA, that if the transaction is purely intrastate, they would have no jurisdiction.

Mr. BISON. The Department's interpretation of "interstate commerce" is a very broad one. They consider interstate commerce as involving a purchase by a retailer from a wholesaler of an article that moved or has moved across State lines at any time. It does not make any difference whether the retailer purchased the commodity directly or not. If a retailer purchased the commodity from the wholesaler, so long as it originated from outside the State it is interstate commerce, according to the Department's view.

Mr. HARDING. That is a fair definition, do you not think?

Mr. BISON. No.

Mr. HARDING. Let me give you this example. If a retailer in Washington purchased Idaho potatoes from another wholesaler in Washington, but they did originate in Idaho, those potatoes are still in interstate commerce, do you not agree?

Mr. BISON. Let me say this or ask whether you are talking about the State of Washington now?

Mr. HARDING. I am talking about Washington, D.C.

Mr. BISON. That would be different, because I think that Congress has the power to regulate commerce within the District.

Mr. HARDING. Well, let us take the State of Washington, then.

Mr. BISON. If it is the State of Washington, a transaction between the retailer and the wholesaler within the State of Washington, in our judgment it ought not to be considered interstate commerce.

Let me make this further statement: As an attorney I am not challenging the power of Congress to regulate that kind of commerce if it wants to. The Supreme Court has sustained Congress in doing so. But I am saying that it is not good national policy to exercise control over commerce of that nature to the fullest degree possible. If this is done it will destroy the State and local governments.

So our argument is simply this: Under the law Congress has the constitutional power but the question here is, Is it good national policy to go that far? That is the question, the principle, and a debatable question, I am sure.

Mr. HARDING. You made a very broad statement at the bottom of page 5 which I am sure you would like to give a second thought. It is:

Enforcement of contracts between retailers and wholesalers is not a proper function of the Federal Government. The Department of Agriculture has more

than enough to do in meeting its responsibilities to assist the advancement and development of American agriculture in these unsettled times, without wasting its resources by attempting to license and regulate thousands of retailers in the purchase of perishable fruits and vegetables from licensed wholesalers.

You would limit this to apply only to intrastate commerce, wouldn't you?

Mr. BISON. As we defined it, yes.

Mr. HARDING. In other words, say that a potato company in the State of Idaho is shipping as a wholesaler a carload of potatoes to someone in Florida, would you have the Federal Government come in and regulate that transaction and see that all of the contractual agreements are carried out in full?

Mr. BISON. If I understood your example the retailer is buying direct from an out-of-State source?

Mr. HARDING. That is correct.

Mr. BISON. That should be covered—that should be licensed—that is interstate commerce.

Mr. GRANT. We have two more witnesses and about 15 minutes left in which to hear them. We thank you very much.

Mr. BISON. Thank you.

Mr. GRANT. Our next witness is Mr. Kenneth D. Naden, secretary of the National Council of Farmer Cooperatives.

We shall be very glad to hear you now, Mr. Naden.

STATEMENT OF KENNETH D. NADEN, SECRETARY, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. NADEN. Mr. Chairman and members of the committee, I am Kenneth D. Naden, secretary, National Council of Farmer Cooperatives. We appreciate the opportunity to present our views on H.R. 5023 to this committee.

The National Council of Farmer Cooperatives is an organization of 122 national, regional, State, and local farmer cooperative associations with which there are affiliated some 5,000 local farmer associations serving approximately 2.75 million farmer memberships for whom these associations purchase farm production supplies and market the commodities which their farmer members produce.

We welcome the opportunity to comment on the provisions of this bill, H.R. 5023, since the Perishable Agricultural Commodities Act (PACA) has been a constructive force in establishment of competitive rules of trading in the fruit and vegetable industry. The purpose of the PACA is to establish rules of fair trading and a mechanism of procedure whereby alleged violations of those rules can be investigated and "adjudged" by an impartial organization but without the time delays and expenses of regular court procedure. It is designed to protect either buyers or sellers who are in a weak competitive position and cannot enforce terms of sale. It is an instrument to make the Government an umpire in an industry program of fair competition. It is our view, based on the experience of members of our organization, that this law has achieved fair success in accomplishing its objective.

From our study of the bill before us, its purpose is to make minor revisions in the PACA in order to make the law more useful and effective. It does not change the intent of the law or the major operat-

ing procedures under which the PACA has been operating. It is designed to plug loopholes for evasion of the regulations, to clarify the operating procedures and to clarify the penalties imposed for violation.

In general, we support and urge the adoption by this committee of the recommendations contained in the bill with the exception of section 2 pertaining to the increase in fees which we will discuss in more detail later.

We especially want to applaud the method which the U.S. Department of Agriculture and the fruit and vegetable industry have used in seeking industry understanding and support for this law. The procedure of annual industry conferences at which all segments of the industry are represented, is one important method used for arriving at a consensus regarding revisions of the regulations. Some members of the National Council of Farmer Cooperatives participated in these annual conferences.

We will not give a detailed explanation and justification for each of the various sections of the bill which we support. The explanation of the need for these provisions are contained in the reports of the industry-PACA conferences for recent years. We will confine our attention therefore, to the only portion of the bill, section 2, which we question because of the related issue of multiple licensing. This provision to raise the fees charged for covering expenses for the administration of the PACA is disturbing to certain federated cooperatives.

The proposed increase in fees, although supporting a proper objective of covering costs of administration, becomes burdensome to federated cooperatives and their farmer members because the fee is simply multiplied by the number of local shipping organizations. The issue of multiple licensing of the local packing houses of a federated cooperative has been opposed by certain federated cooperatives for several years. This was considered by them to be completely unnecessary since multiple licensing did not afford any additional protection to buyers or appear to serve the public interest. About 2 years ago, after considerable negotiation with the USDA, these cooperatives agreed to licensing of each of their local shipping associations. Now there is considerable apprehension among these local associations that the \$50 maximum fee for each license, as listed in section 2, would immediately become the minimum and a doubling of license fees would be burdensome to a federated cooperative.

Previous discussion by PACA industry conferees had indicated that license fees might be raised by about \$10. It is our recommendation that the language of section 2 be amended to insure that PACA license fees be raised only in small increments no larger than \$5 or \$10 per year to a maximum of \$50. In this way licensees could be assured that fees would rise only in accordance with costs of administration and be assured that the \$50 maximum does not immediately become the minimum. In view of continually rising costs, it is important that these fees be spread over a number of years.

We understand that the decision by USDA for multiple licensing of federated cooperatives was based on the fact that the local shipping organizations are separate legal identities. Most of the large federations are composed of separately incorporated units, therefore, licensing was extended to each individual member organization. However,

a centralized operation, even with many individual unincorporated units, would still be required to pay for only one license—even though the total volume of business might be far larger than that of a federated cooperative. This could be true of either a farmer cooperative, a commercial shipper, or a retail chain organization. This situation, therefore, at least raises the question as to whether the fact of separate legal identification is a fully equitable and adequate basis for licensing. There is both an economic and legal relationship existing between a firm and the physical plants through which it performs certain operations. Perhaps membership or operational cohesion, as in the case of retail food chains, or even volume, might well be studied as a more valid basis for licensing.

In summary we believe the proposals in this bill for strengthening the PACA are constructive provided section 2 is clarified to prevent an immediate doubling of license fees.

We appreciate the opportunity to express our views to this committee.

Mr. GRANT. Thank you so much. Are there any questions?

Mr. NADEN. Thank you.

Mr. GRANT. Our next witness is Mr. Watson Rogers, president of the National Food Brokers Association. We will be glad to hear you now.

STATEMENT OF WATSON ROGERS, PRESIDENT OF THE NATIONAL FOOD BROKERS ASSOCIATION

Mr. ROGERS. Mr. Chairman and members of the House Agriculture Committee.

I want to thank you for giving me the privilege of appearing before you to present our views on the need for amendments to H.R. 5023, a bill which proposed amendments to the Perishable Agricultural Commodities Act. Before I proceed with a discussion of these views, I would like to explain that I am president of the National Food Brokers Association. Founded in 1904 this association today represents the leading food broker firms in the Nation. Our members are located in every market area. They sell a majority of the processed food and grocery products to the wholesale buyers of the Nation. A large majority of our members sell frozen food products, including fruits and vegetables.

Very few of our people sell fresh fruits and vegetables. We are not in that business.

Because it is so important to a full understanding of the position of our members I should like to point out how a true food broker, as we define him, and as he operates in the field, differs from other brokers. Our members act solely as the agent of the seller who is the packer or processor. They do not act as the agent of the buyer, even though they provide the buyer with many services on behalf of their principal, the processor. Further the true food broker does not buy or sell for his own account. His full allegiance is to the seller. He cannot speculate, for that would put his own personal interest in conflict with that of his principal. He does not set the price the seller charges. As the sales agent he takes orders from the buyers to be filled by his principals. These principals are served on a regular, longtime basis, and not on a temporary, hit-or-miss basis.

As you can readily see, this type of businessman is far different from the brokers in other industries and fields, particularly in the produce field. Undoubtedly the customs and marketing practices in the fresh fruit and vegetable industry require a different type of marketing man. Brokers in that field, by custom, represent either the buyer or the seller, as the need arises. It is not unusual that such brokers even buy for their own account. Undoubtedly such purchasing is required because of the nature of the product.

We believe the PACA was basically designed for the fresh fruit and vegetable industry, particularly to protect the interests of the grower. Since the time the PACA was passed in 1930 an entirely new industry has grown up and this has resulted in inequities in the licensing requirements under the act. Unless these inequities are corrected they will lead to growing discontent with the act and will in time cause many in the food industry to turn against it. This could lead to a loss of the helpful provisions of the act as they apply to the fresh fruit and vegetable industry and to the growers.

When the act was passed, frozen foods were in their infancy, barely past the experimental stage. No one could then foretell the direction this new industry would take. As you no doubt know, this industry has developed along the same lines as the older canned foods processing industry. In fact, many of the Nation's canning firms also do freezing of fruits and vegetables. That is why so many freezers have turned to the use of food brokers to sell their products, for that is the way the majority of canned foods are largely sold.

To require the PACA licensing of a food broker who negotiates the sale of frozen fruits and vegetables is most unfair, for it singles out one form of processed foods from another. Yet today there is little difference between the distribution and sale of one type of product from the other food products.

Thus there is no more justification for licensing the broker negotiating the sale of frozen fruits or vegetables than for the sale of canned or other processed fruits or vegetables, or other food products. All such products are packed by or for a processor who is solely responsible for the products, their quality, method of processing, method, and terms of sale. Likewise there is no more reason for requiring such an agent of the processor to be licensed than the salaried salesman of that same processor.

As more and more canners venture into the field of processing frozen fruits and vegetables they usually look to their regular brokers to sell these products, too. The volume per local market is small and often the broker who handles such sales usually does so in a limited way. Therefore, many brokers question if they should take out a license for the privilege of selling such a limited volume.

These brokers, who have been representing canners for a great many years find it difficult to understand why the Government would force them to take out a license merely because their established canner principal started freezing fruits and vegetables. They would be selling the same commodities, for the same processor, and to the same buyers under the same terms. But because one part of the pack was processed differently by freezing they would be required to have a license for selling that part of the pack.

There are frozen food processors who have their own salaried sales organizations in some areas and brokers in others. Both sales teams

are performing the same service. One is paid a salary, the other by commission. Both take the information supplied by the processor and work to make their sales to the customers in their respective markets. The broker has to have a license but the salaried salesman does not. It does not make sense.

That is why, gentlemen, we believe that the bill, H.R. 5023, should be amended to remove from the licensing provisions of PACA the independent-contractor sales agent handling frozen foods who does not buy or sell for his own account. We therefore recommend the following amendment to H.R. 5023:

After line 4 of page 2 of the bill insert the following:

Sec. 2. Section 1(7) of such Act (7 U.S.C. 499a) is amended to read as follows:

(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively:—

and this is the change—

Provided, however, That no person shall be considered a broker subject to the provisions of this Act if he is an independent-contractor sales agent and the only sales of perishable agricultural commodities negotiated by him are sales of frozen fruits and vegetables packed by or for a processor, and who does not at any time take or have title to such commodities.

And then renumber subsequent sections of the bill.

Gentlemen, this amendment is most necessary now in the interests of fair and equitable treatment. With the growing increase in the licensing fee the burden becomes greater on the broker handling frozen foods. The feeling is growing on their part that they are being penalized, with their fees being used to finance the policing of other areas in the produce field.

With the different type of operation in the fresh fruit and vegetable field, such license and control may be necessary. In fact, we understand the act is most valuable to that industry. We would agree that an agent who takes title to merchandise, who represents either buyer or seller, depending on the circumstances, such an agent should be licensed. But to burden the bona fide sales agent of the processor who is himself licensed is unfair. It is particularly inequitable for a food broker who handles a small volume of frozen fruits or vegetables to have to pay the same license as some fresh fruit and vegetable shipper who ships thousands of carloads and thousands of truckloads annually.

We earnestly entreat you to incorporate our suggested amendment to your bill, gentlemen, so that when you authorize an increase in the licensing fees under PACA you do not at the same time compound an inequity. It is most unjust to continue such licensing requirements under an increased license fee.

I have just a minute or two further comment.

I would like to leave with you some material which I have here.

The statement has been made by representatives of the Department of Agriculture that brokers in frozen foods should be licensed in order that they must maintain proper records and have them available to the Department of Agriculture officials in the event a controversy arises.

I would like to leave with you for the record copies of the sales memorandum that practically most of frozen food brokers use.

I have copies for the subcommittee of these sales memorandums, you will see, by the nature of our operation, all of the needed information is always on these memorandums and they are kept in the brokerage office far longer than PACA requires. There will be no difficulty whatsoever whether or not the broker was licensed all of the information needed in the case of these controversies will be available. I would like to leave enough of these for all of you, if you do not mind.

Also, I would like to refer to the examples used by Mr. Grange yesterday. I am talking about where he outlined some cases they had against brokers.

There was a so-called field broker involved. I will explain that later, if you are interested. There are some frozen-food processors who use what some people refer to as "field brokers" as their national sales agents. In other words, rather than employing a salaried sales manager whom they would only be able to use for part of the year, they use field brokers as their sales agents.

These field brokers, in turn, appoint other local brokers as their local sales agents. In cases of this kind, we feel that the so-called field brokers should be licensed, for they, in effect, would be acting as the principal.

In example No. 3, Mr. Grange pointed out that the broker, in the name of his principal, filed a PACA complaint against a buyer for failure to pay for a load of frozen strawberries. The broker, regardless of whether or not he is licensed, would do this for his principal, as the principal's agents, just as he would if he were a salaried representative.

In example No. 4, he referred to the broker's written conformation being used by a buyer to file a PACA complaint against a seller. As I said earlier, these records would be available regardless of whether or not frozen-foods brokers were licensed. We are sure that the Department of Agriculture, in making this presentation to you to oppose our position, would use what in its opinion were the best examples to show that our position was not justified. So in checking all of the illustrations that could be used, not one of these examples points up the need for the true frozen-food broker to be under this licensing provision.

Mr. Chairman, I know that your time is short. I would be glad to try to answer any questions you or the members of the committee may have on our position here.

Mr. GRANT. One question comes to my mind. Since this is used primarily in the enforcement of the contract where a broker sells, or whatever it might be, frozen foods or anything he offers to sell, does he under State law have any liability, for instance, let us say this, that you sell some frozen foods, acting as a broker for the principal to a retailer and it comes up bad. Under State law is there any liability, or under common law, would the legal action have to be made by the retailer to the principal?

Mr. ROGERS. To the principal packer.

Mr. GRANT. He does not pay the broker anything?

Mr. ROGERS. No, the retailer or the wholesaler pays the packer, after 30 days' time, we get our brokerage.

Mr. GRANT. Is there any liability on the part of the dealers to the broker in making payment for what he has purchased?

Mr. ROGERS. You mean other than PAC Act?

It would be the responsibility of this dealer or wholesaler, whoever bought it, to the manufacturer.

Mr. GRANT. That is what I was trying to find out.

Mr. ROGERS. That is right.

Mr. GRANT. Is there any legal liability on the part of the broker in the contract between the manufacturer, or the principal, or whatever he is called, as between him and the retailer?

Mr. ROGERS. Yes, you are talking about just the general operation, not PACA?

Mr. GRANT. Yes.

Mr. ROGERS. We handled the sale of the majority of processors foods of this Nation. Frozen foods is just one part of it. I might say a rather minor part.

We are local salespeople. We sell for the manufacturer. The manufacturer bills the customer. We are just his local agent. We work on commission rather than salary.

Mr. GRANT. I understand that. What I am trying to bring out for the record is this: Is there any legal liability upon a broker for a breach of contract between the manufacturer, or the principal and the retailer?

Mr. ROGERS. All we can do is pass on the information the manufacturer gives us. If the retailer says that is not right, then he goes to the manufacturer.

Mr. GRANT. Are there any further questions?

Mr. JENNINGS. The only licensing you are required to have as a broker is the license required by the PACA?

Mr. ROGERS. Yes.

Mr. JENNINGS. You might be handling frozen meat, frozen fish?

Mr. ROGERS. That is right.

Mr. JENNINGS. And other frozen commodities?

Mr. ROGERS. That is right.

Mr. JENNINGS. You are not required to have a license for those, are you?

Mr. ROGERS. That is right.

Mr. JENNINGS. You are only required under PACA to have a license——

Mr. ROGERS. For fruits and vegetables. As a good example, there is the Florida citrus industry. We sell tons of citrus concentrate out of Florida. We handle all of the Minute Maid sales and other products. There is no license involved and no problem involved. The PACA, or I do not know who made the ruling, made the ruling that citrus concentrates do not come under it. There is no problem with us on that. But peeled and sliced peaches, sugared peaches, packed in California, come under it.

If one of our brokers now sells just a little of fresh fruits and vegetables, he should be under this act and should take out a license. I think all fresh fruits and vegetables should be under this, but we are talking about processed. The PACA is a good law. It has done a good deal for the industry. We do not want to see anything happen that would hurt it, but we do think, in our field of processed foods, it is most unfair the way the situation is now.

We think we are making a very reasonable request here.

Again, I say any of our members who take title to frozen foods should have a license. If they buy any frozen foods and vegetables, they should have a license. We have a member in the South who only sells fresh cranberries, for Thansgiving and Christmas, a limited business. He was asking about this amendment. I told him that we are not trying to get him out of having a PACA license—it gets into the fresh fruit and vegetable field. He says that he will quit selling cranberries. He will have to quit because I think he should stay under the bill.

We cannot afford to open it up just because it has worked a hardship on him.

Mr. HAGEN. How many people do you have in your organization, for example do you operate only with a desk, a secretary, and a telephone?

Mr. ROGERS. Our members, in handling the sale of processed foods not only have large organizations, but those of other sizes. The average brokerage firm has from 10 to 20. We not only sell to the wholesaler buyers, we get out into the supermarkets and we do retail merchandising. We represent people on a regular basis. It is not one of these deals where someone comes up and asks for a load of something. Many of our people in our office represent 40 and 50 people, the same people week in and week out. We know that we have to do the right thing with those manufacturers or we will be out.

We represent some of the biggest people, such as Procter & Gamble. We represent three or four big divisions of General Foods.

Mr. HAGEN. Do you have warehouses?

Mr. ROGERS. In the South many of our people have their own warehouses for consigned stocks so that they can sell in small quantities. They sell for the account of the principal. It remains the principal's merchandise. Our members do not buy and sell. If they do, we expel them from the association.

Mr. HARDING. I would like to compliment you on your fine statement.

The PACA has been invaluable to the producers and shippers of perishable agricultural commodities.

Mr. ROGERS. It certainly has.

Mr. HARDING. We are presently expanding our potato processing in the State of Idaho. A processing company, for example, that produces only instant mashed potatoes, selling them to members of your association, would it be necessary for those members to have a PACA license?

Mr. ROGERS. That has not come up. I do not think so because here again it says only fresh or frozen foods and vegetables. I do not know what their interpretation would be on that. I know that we are in this business quite a bit. We are very proud to see its development.

Mr. HARDING. There is not any doubt that frozen french-fried potatoes would be considered a frozen food, is there?

Mr. ROGERS. I suppose that would be frozen.

Mr. HARDING. I would appreciate it if you would get positive answers to these questions from the Department and make the answers a part of the record. (See p. 115.)

Mr. ROGERS. I will try to see what I can do. At first our brokers were taking licenses to sell frozen concentrate, but they ruled that it did not come under the act, and we were very happy for that ruling.

Mr. McINTIRE. May I express my appreciation as a member of the full committee and not of the subcommittee for your presence here today, Mr. Rogers.

Will you supply for the record how many frozen food brokers there are in the country—how many members of your association—how many of these frozen food brokers handle frozen fresh fruits and vegetables?

Mr. ROGERS. You want how many frozen food brokers first?

Mr. McINTIRE. Frozen food brokers there are in the country.

Mr. ROGERS. I can tell you now, Mr. McIntire. Here is the directory of the members in the Nation. Here is the book just off the press. It tells of the firms, all about them. It is keyed to designate the type of product handled. I will be glad to leave this directory with the staff.

Mr. McINTIRE. It would be simpler to give a definite number.

Mr. ROGERS. It will take a little time to go through this, but we will be glad to try to do it.

You want to know how many frozen foods brokers there are and how many are members?

Mr. McINTIRE. That is right. And how many of these brokers handle frozen fruits and vegetables.

Mr. ROGERS. Yes, I will try to do that.

(The information referred to follows:)

AUGUST 10, 1961.

HON. CLIFFORD G. McINTIRE,
House Office Building,
Washington, D.C.

DEAR MR. McINTIRE: As you requested at the hearing on H.R. 5023, we have attempted to accumulate information regarding the number of frozen food brokers.

I would like to point out that we have 1,977 members of the National Food Brokers Association. Some of these do not handle frozen foods. Some brokers handle frozen foods in a limited way and some of our members are practically exclusive frozen food brokers.

In checking our directory of members, which is properly keyed to designate the type of products handled, we find 1,151 of these offices handle some frozen foods. This is all types of frozen foods and not necessarily frozen fruits or vegetables that come under the provision of the PACA Act. A lot of these brokers handle frozen citrus concentrates which, as you know, is not under the provision of the act.

In addition to these 1,151 offices of ours that indicate they sell some frozen foods, we know of at least a hundred other brokers who deal in frozen foods. Since these are not members of the association we are not sure of their type of operation. If they buy and sell for their own account they would not be eligible for exemption from the PACA license as outlined in our suggested amendment to your bill. There may be a few other frozen food brokers with which we are not familiar.

You recall in the testimony of the Department of Agriculture they stated there were 450 frozen food brokers who now hold PACA licenses. I am assuming that covers most of the brokers who deal in frozen fruits or vegetables as outlined in the act.

We hope this furnishes you the information you desired. We are sending a copy of this letter to the House Agriculture Committee in the event they would like to include it in the official record.

Sincerely yours,

WATSON ROGERS, *President.*

P.S.—We base the number of nonmember frozen food brokers on the list of these types of brokers attending frozen food conventions who are not members of our association. As stated, there may be others we do not know about.

W.R.

Mr. McINTIRE. I would like to ask if the point which you are making, Mr. Rogers, is principally one of definition, as to whether or not frozen fruits and vegetables are under the Perishable Agricultural Commodities Act by definition?

Mr. ROGERS. That is mainly, I think, our concern. We feel they are processed foods and should not be under the act, so far as brokers are concerned.

Mr. McINTIRE. What is your opinion as to whether they are, in fact, perishables?

Mr. ROGERS. I suppose that you could say that canned foods are perishable, if you let them set long enough under certain climatic conditions, or that might be true of any other food practically that we use. Frozen foods kept under proper temperatures will keep a long time.

Mr. McINTIRE. I know your contention is that they are not perishable. Under your interpretation of the jurisdiction of the PAC Act, would you give us your idea of what ought to be in it?

Mr. ROGERS. The way food manufacturers have been on our people, getting them to rotate stock, they have got us sold that everything is more or less perishable.

Mr. McINTIRE. It is your contention that somewhere in this area of the definition that frozen fruits and vegetables are not or should not be classified as perishable?

Mr. ROGERS. They should not be in the same category as fresh fruits and vegetables, so far as perishability is concerned.

Mr. McINTIRE. Not by category—the act is definite as to whether they are in or whether they are out.

Mr. ROGERS. The purpose of their being frozen, in the first place, is so that they will keep over a longer period of time.

Mr. McINTIRE. I am not an authority.

Mr. ROGERS. I am just trying to explain.

Mr. McINTIRE. I am only thinking that the act must define its jurisdiction.

Mr. ROGERS. That is right. Let me make——

Mr. McINTIRE. Presently the act includes frozen fruits and vegetables within its definition.

Mr. ROGERS. Let me make one thing clear. I am not saying all frozen fruits and vegetables should come out of the act. I am saying that if one of our brokers, buys frozen fruits and vegetables, should be licensed. And I say that even a broker who acts as a principal should be licensed. I only say that where these local brokers are concerned, if they are merely acting as local sales agents and passing onto the buyers information the manufacturers give them—I say, they should not come under the provisions of the act. I am not advocating that frozen foods come out of this at all. I do not think they should.

Mr. McINTIRE. I thought the tenor of your statement was that.

Mr. ROGERS. No, no. As an example, I say that where we have been representing a canner for years and he starts freezing fruits and vegetables, we must take out a license. Yet we sell for the same processor to the same customers on the same terms. Our people find it hard to understand. We have been doing business the same way for years, suddenly we have to take out a license to do business under this act.

Mr. McINTIRE. Mr. Chairman, I am a little confused here.

Mr. GRANT. I thought you were. [Laughter.]

Mr. ROGERS. All I am saying is that the legitimate frozen food broker who does not buy and sell for his own account, does not speculate in foodstuff, should not be required to have the license. If that same broker has anything in the fresh commodity line, he should have a license. If the same broker buys and sells, he should have a license, even in frozen foods, because then he becomes in control of the merchandise. He then is the one who has the right to say what is in the package and what is not. He should be held responsible under the PACA.

Mr. McINTIRE. Mr. Chairman, I am certainly confused.

You say, on the one hand, that a canner of fruits and vegetables, because of a change of the times, goes over to freezing, that the broker is not then in the jurisdiction of the act—is that what you are saying?

Mr. ROGERS. No, you misunderstood me. Let us just give an example. I have been representing Green Giant peas for 10 or more years, selling to all of their customers in my area. Green Giant comes to me and says, "Look, we are going to start freezing some of our peas. We want you to handle those, too."

I say, "Fine, we will handle them."

But then I discover that to handle those peas I have to take out a license.

Mr. McINTIRE. All right, I follow you up to this point.

Mr. ROGERS. All right.

Mr. McINTIRE. I do not follow you when you say that frozen fruits and vegetables should not be under the act.

Mr. ROGERS. You have misunderstood me. I said repeatedly that they should be under the act—frozen fruits and vegetables should definitely be under the act, but just the exclusion of these local sales agents who cannot do anything but pass on to the buyer what this manufacturer gives him. That is all they can do.

Mr. McINTIRE. Thank you.

Mr. GRANT. We thank you.

Mr. ROGERS. Thank you.

Mr. GRANT. Mr. Heimbürger wants to ask a question or two for the record of the Department representative.

Mr. Grange, will you come up, please?

Mr. HEIMBURGER. Mr. Grange, I would like you to straighten me out on this intrastate jurisdiction. If a retailer in Baltimore buys some fresh vegetables from a wholesaler in Baltimore, is that within the scope of your jurisdiction? The wholesaler, of course, is licensed.

STATEMENT OF GEORGE R. GRANGE, DEPUTY DIRECTOR, FRUITS AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE—Resumed

Mr. GRANGE. The act now says "any perishable agricultural commodity in the current of interstate commerce." It has been held in the courts and by the Department that a commodity that has moved or is in the process of moving in interstate commerce is still in the current of interstate commerce, even though the two parties involved may be located in the same State.

Mr. HEIMBURGER. Then to come back to the Baltimore example, you have to make a determination on the basis of the commodity itself. If the Baltimore retailer had bought some tomatoes from a wholesaler,

where the tomatoes originated in southern Maryland, it would not be subject to your jurisdiction, is that correct?

Mr. GRANGE. Right.

Mr. HEIMBURGER. But, however, if those tomatoes were to come from the State of Delaware, the transaction would be subject to your jurisdiction and you would accept a complaint on the basis of a breach of contract?

Mr. GRANGE. That is right.

Mr. HEIMBURGER. Will you accept a complaint from a licensee against a person who is not licensed under the act?

Mr. GRANGE. No, sir; we cannot.

Mr. HEIMBURGER. Can you accept a complaint from a person who is not licensed against a licensee?

Mr. GRANGE. Yes, sir. May I modify my answer to your previous question?

Mr. HEIMBURGER. Yes.

Mr. GRANGE. We will not accept a complaint against a man who is not licensed or who is not subject to license.

Mr. HEIMBURGER. I can understand that. For example, if a licensed dealer in Florida had a complaint against an unlicensed retailer, a retailer not subject to license, you would not be able to take jurisdiction.

Mr. GRANGE. We would have no jurisdiction.

Mr. HEIMBURGER. Of that complaint?

Mr. GRANGE. Yes.

Mr. HEIMBURGER. However, is this true, then, that—the second question—the same two sets of characters, the licensed dealer in Florida and an unlicensed retailer in Maryland and one who is not legally subject to license, would you accept a complaint from him against the licensed dealer in Florida?

Mr. GRANGE. The act specifies that we may accept complaints against any person who is licensed or is subject to license, regardless of whether the complainant is himself a licensee.

Mr. HEIMBURGER. Thank you, Mr. Chairman.

Mr. JENNINGS. Let me ask one brief question:

How many employees do you have in administering this PACA Act?

Mr. GRANGE. I believe we have 101, Mr. Jennings.

Mr. JENNINGS. Do they have other duties?

Mr. GRANGE. Except for persons like myself, no. We have a Regulatory Branch in the Fruits and Vegetables Division. Most of these are concerned with administering the Perishable Agricultural Commodities Act and other related statutes.

Mr. JENNINGS. Do others in the Department have a dual responsibility in the Enforcement Division, weights and measures, marketing, and so forth—do they overlap, or do they only enforce the PACA Act?

Mr. GRANGE. No, it is a separate administrative unit. We have related statutes. There is the Producing Agency Act, that is related to the PAC Act. We have a Standard Container Act that regulates the type and kind of containers.

Mr. JENNINGS. Those persons do not have overlapping responsibility?

Mr. GRANGE. These acts I am now naming are those that are administered by our Regulatory Branch.

Mr. JENNINGS. I understand that. You, perhaps, would have jurisdiction over the various branches you mentioned, but does the personnel in each of these various branches have overlapping responsibility or direct responsibility?

Mr. GRANGE. Direct responsibility.

Mr. JENNINGS. Thank you.

Mr. HARDING (presiding). I would like to clarify one more question. Processed foods are not under the jurisdiction of PACA unless they are frozen, is that correct?

Mr. GRANGE. No, sir.

Mr. HARDING. That is not correct? I would like to take, for example, corn. I understand fresh corn would be covered by the act. However, is canned corn under the jurisdiction of the act?

Mr. GRANGE. No, sir.

Mr. HARDING. Lets put a little milk in with it, and we have creamed style corn. Is that under the jurisdiction of the act?

Mr. GRANGE. No, sir.

Mr. HARDING. So we freeze the corn and have a package similar to Bird's Eye frozen corn; is that under the jurisdiction of the act?

Mr. GRANGE. Yes, sir.

Mr. HARDING. Let us go back to the potato field.

We have instant mashed potatoes in the can—is that under the jurisdiction of the act?

Mr. GRANGE. No, sir.

Mr. HARDING. Neither are the ones containing potato chips, that is, those in boxes?

Mr. GRANGE. No.

Mr. HARDING. Frozen french fries?

Mr. GRANGE. No, sir.

Mr. HARDING. Frozen potatoes are not?

Mr. GRANGE. May I elaborate a little bit on that?

Mr. HARDING. Yes.

Mr. GRANGE. The act says or uses the term "perishable agricultural commodities." And then it goes on and defines perishable agricultural commodities to be fresh fruits and vegetables of any kind or character whether or not frozen or packed in ice. It does not say frozen or fresh fruits and vegetables.

The interpretation of that is if you take a product and change its form materially, such as instant frozen potatoes which have been dehydrated before they have been frozen, then it is not a fresh potato in frozen form. Something else has been done to it. It has been changed materially in kind or character.

The corn in your example, nothing much of anything has been done to it except to take it off the cob and freeze it. It is fresh corn which has been frozen.

The regulations contain a rather long paragraph drawing this rather fine dividing line between the products that are considered as processed by some other action in addition to freezing, and, therefore, are not covered by the statute as compared with the steps that you would permit and still construe it to be essentially a fresh fruit or vegetable in frozen form; and, therefore, are covered by the statute.

Mr. HARDING. Would you be kind enough to furnish me personally with a list of the frozen products which you consider are covered

by the act as compared with those that are not covered by the act?

Mr. GRANGE. Yes.

(The information referred to above follows:)

COMMODITIES UNDER THE PACA

The following commodities, whether or not frozen or packed in ice are perishable agricultural commodities and come under the PACA (see F-5).¹

FRUITS

Algaroba	Cherimoya	Olive (see D-21)
Apple (see C-1, D-1, D-2, D-3, D-12)	Cherry, sour	Orange (see C-5, D-12)
Apricot (see D-4)	Cherry, sweet	Orange, satsuma
Avocado	Choke cherry	Panapas
Banana	Citron	Panapen
Berries:	Crabapple	Papaya
Blackberry	Cranberry	Passion fruit
Blueberry, high-bush	Date (see C-7)	Paw Paw
Blueberry, low-bush	Feijoa	Peach
Boysenberry	Fig (see D-15)	Pear
Buffalo berry	Goumi	Persimmon
Currant, black	Grape (see C-9, D-12, D- 16, D-17)	Pineapple
Currant, red	Grapefruit (see C-5, D- 12)	Plantain
Dewberry	Guava	Plum
Elderberry	Jujube	Pomegranate
Gooseberry	Kumquat	Prunes
Huckleberry	Lemon (see C-5, D-12)	Prickly pear
Lingenberry	Lichi	Quenapa
Loganberry	Lime (see C-5, D-12)	Quince
Mulberry	Limequat	Raisin
Raspberry, blackcap	Loquat	Rose Apple
Raspberry, red	Mandarian	Sapodilla
Service berry	Mango	Sapote
Strawberry	Medlar	Sauer Kraut
Youngberry	Natal plum	Star apple
Carob	Nectarine	Tamarind
Ceriman		Tangelo
		Tangerine

VEGETABLES AND MELONS

Anise	Cabbage (see C-3)	Dandelion
Arrowroot	Cabbage sprouts	Dasheen
Artichoke, Chinese	Cantaloup	Dulse
Artichoke, globe	Cardoon	Eggplant
Artichoke, Jerusalem	Carrot (see C-4)	Endive
Asparagus	Cauliflower	Escarole
Bamboo shoots	Celeriac	Fiddlehead greens
Bean sprouts (see C-2)	Celery	Field salad
Bean, fava	Chard	French endive
Bean, horticultural	Chayote	Garlic (see C-8)
Bean, lima	Chervil	Gherkin
Bean, snap	Chicoria	Ginger root
Bean, vegetable soy	Chicory, root	Ground cherry
Beet	Chinese cabbage	Hanover salad
Beet greens	Chive	Horseradish (see C-10)
Bitter melon	Cipolino	Irish moss
Borage	Citron melon	Kale
Broccoli	Collard	Kohlrabi
Broccoli greens	Corn, green	Lambsquarter
Broccoli rabe	Corn salad	Leek
Brussels sprouts	Cress, garden	Lettuce
Burdock root	Cucumber (see C-6)	Lettuce, stem
Burdock tops	Daikon	Martynia

¹ Compiled by Fruit and Vegetable Division.

VEGETABLES AND MELONS—Continued

Melon, casaba	Orach	Rutabaga
Melon, crenshaw	Pak choi	Salsify
Melon, honeyball (see C-11)	Palm cabbage	Shallot
Melon, honeydew (see C-11)	Parsley	Sorrel
Melon, Japanese	Parsley, root	Spinach
Melon, Leopard	Parsnip	Spinach, New Zealand
Melon, Persian	Peas, green	Squash
Melon, Santa Claus	Peas, southern	Squash, greens
Melon, Spanish	Pepino	Sweet potato
Mushroom (see C-12)	Pepper Pigeon pea roke greens	Tampala
Muskmelon	Potato (see C-14, D-26)	Tanier
Mustard, Chinese	Pumpkin	Tomato
Mustard greens	Radish	Truffle
Mustard, spinach	Rape	Turnip
Okra	Rappini	Turnip greens
Onion (see C-13, D-22, D-23)	Rhubarb	Udo
Onion, green	Romaine	Water chestnut
	Roquette	Water cress
	Roselle	Watermelon
		Wonderberry

COMMODITIES UNDER THE PACA

C-1 Apples, frozen sliced, come under the act, as the character of the product has not been changed. However, frozen applesauce does not as the apples must be cooked, then mashed into a sauce, thus breaking down the tissues to a point that it no longer bears any of the distinguishable characteristics of the original fruit.

C-2 Bean (mung) sprouts: A vegetable used in making chow mein and increasing in popularity with other vegetables in raw salads and many other dishes. Comes under the act when marketed fresh. Persons buying the dry beans for sprouting should be considered in the same category as producers.

C-3 Cabbage for making sauerkraut comes under the act if shipped in interstate commerce before shredding and placing in brine.

C-4 Carrots, diced: Paragraph 46.2(1) of the regulations defines fresh fruits and fresh vegetables to include all products generally considered by the trade as perishable fruits and vegetables, whether or not frozen or packed in ice. Upon reviewing the *Harwood* case before the Interstate Commerce Commission (MC-C968) it is found that before the Commission appeared representatives of the U.S. Department of Agriculture, 11 scientists, 2 professors of Ohio State University, officials or agencies of 9 States, State and regional producers and shippers, and various associations of producers and shippers. Those present represented a large factor of the trade. It was concluded that slicing did not make the commodity a manufactured product. Therefore, dicing would be in the same category. (See F-5.)

C-5 Citrus segments, fresh packed in natural juices: The companies preparing this product advertise on the container, "Perishable," "Fresh * * *," "No preservatives have been added" and instructions to keep the product under refrigeration. The product has not been changed into an article of food of a different character, therefore comes under the act.

C-6 Cucumbers for making pickles come under the act if shipped in interstate commerce before placing in brine.

C-7 Dates: A perishable agricultural commodity within the meaning of the Perishable Agricultural Commodities Act.

C-8 Garlic: Designated as a perishable agricultural commodity in docket 4253.

C-9 Grapes, stemmed, crushed, frozen: In connection with E-6941 the matter was discussed with members of the Solicitor's staff who expressed the opinion that stemming and crushing of the grapes merely changed the form without changing the grapes into a product of a different character, and such grapes are a fresh fruit within the meaning of the act. (See C-16.)

C-10 Horseradish roots: A perishable agricultural commodity. (S-2347.)

C-11 Melon balls, frozen: Same category as diced or sliced. (See C-4.)

C-12 Mushrooms: Bureau of Plant Industry states that the tops of mushrooms are in the nature of a fruit and the bottoms a vegetable. A U.S. district

court in construing the Tariff Act held that mushrooms come within the terms of the act relating to vegetables not classified. Therefore, the Solicitor stated that it may be safely considered that mushrooms are a perishable agricultural commodity within the meaning of the act.

C-13 Onion, picklers: In S-3045 it was concluded that onion sets are not a perishable agricultural commodity within the meaning of the act. It is a common practice to remove a percentage of the onion sets ranging in size from three-fourths to 1 inch and selling them as picklers or cocktail onions. When sold for such purposes they are a perishable agricultural commodity within the meaning of the act. (See D-23.)

C-14 Potatoes, diced. (See C-4.)

C-15 Potatoes, seed: A perishable agricultural commodity and comes within the provisions of the act, fresh vegetables being defined in the regulations as all products generally considered by the trade as perishable (S-2839).

C-16 Grape, pulp, frozen: In the Pacific Northwest, frozen grape pulp, stemmed and washed, is known by the trade as a commodity containing seeds, some skins, stems, and leaves, while a product totally free from seeds, stems, and leaves is known as grape puree. Frozen grape pulp, stemmed and washed, is a perishable agricultural commodity. Where there is a question as to the meaning of descriptive words used in an f.o.b. contract, the interpretation should be governed by the general understanding at shipping point and not where the buyer is in business (S-4543; docket 5562).

COMMODITIES NOT UNDER PACA

D-1 Apples, caramel: Not a perishable agricultural commodity within the meaning of the act. However, persons buying apples for manufacturing caramel apples are subject to the act in the same manner as other processors.

D-2 Apples, dried: "Dried apples would not be called a manufactured article, though the apple is peeled and cored and sliced, and dried by exposure to the sun and manipulation. The substance of the dried apple is still apple * * *" (*Frazee v. Moffitt*, 18 Fed. 584, 587 (C.A. 2)).

However, dried apples do not come under the Perishable Agricultural Commodities Act as the regulation (46.21) exclude "perishable agricultural commodities which have been dried or manufactured into articles of food of a different character."

D-3 Apples, frozen sauce. (See C-1.)

D-4 Apricot puree is made by mashing the apricot into a pulp. It no longer bears any of the distinguishable characteristics of the original fruit. Therefore, it must be considered as one of the processed products which the act was not intended to cover.

D-5 Beans, dried: Regulations (46.21) exclude "perishable agricultural commodities which have been dried * * *." Therefore, dry beans do not come under the Perishable Agricultural Commodities Act.

D-6 Beets, sugar, are primarily grown for processing into sugar. Only in rare instances are sugarbeets substituted for table beets. They are not considered as table stock commercially. Our conclusion, therefore, was that sugarbeets are not covered by the act.

D-7 Cabbage (kraut). (See C-3.)

D-8 Cashew nuts: Not a perishable agricultural commodity within the meaning of the Perishable Agricultural Commodities Act.)

D-9 Cherries, maraschino: Cherries in brine are not a perishable fruit, but specifically covered by the act. Therefore, after the cherries are removed from the brine, they no longer come under the act.

D-10 Chestnuts are not a perishable agricultural commodity (S-3715).

D-11 Coconuts are not a perishable agricultural commodity within the meaning of the act (NY-3663).

D-12 Concentrates and juices (fresh or frozen): Only those buying fruit in quantities aggregating one ton or more during a day in the course of interstate commerce for making concentrates and juices are subject to the act. Transactions of the manufactured product not under the act.

D-13 Cones, sprays, and wreaths cannot be considered a perishable agricultural commodity within the meaning of the act (S-3400).

D-14 Cucumbers (pickles). (See C-6.)

D-15 Figs, stringed: From limited information available we are inclined to believe that the figs are dried before being shipped in foreign commerce, therefore, not a product that comes under the Perishable Agricultural Commodities Act.

D-16 Grape puree, frozen, is made by mashing with the pulp and juice passing through sieves holding back seeds, stem, some of the skin and similar waste material. The resulting product no longer bears any of the distinguishable characteristics of the original fruit. Therefore, must be considered a processed product not covered by the act (D-9939). (See C-16.)

D-17 Grapejuice. (See D-12.)

D-18 Holly wreath: Not a perishable agricultural commodity (S-1582).

D-19 Lily root, water: Little is known about this commodity, except that possibly it is used by the Chinese in cooking. It should be placed on our doubtful list.

D-20 Melons, zucca, brined (SO₂): If the processing of zucca melons consists of brining (SO₂) it removes the product from the classification of being "fresh." The same applies to the brining of cucumbers for pickling, and krauting cabbage. Cherries in brine are not a perishable agricultural commodity, but they are specifically covered as brought out in section 1, paragraph 4 of the act.

D-21 Olives, green: Shipments from Spain are in hogshead containing approximately 180 gallons; 45° to 50° of salt has been added. California olives are usually shipped in 50-gallon barrels. These shipments have lactic acid added at the time the original salt is put in barrels. Therefore, cannot be considered a perishable agricultural commodity.

D-22 Onion rings, frozen: The onions are cooked in oil prior to being frozen, therefore not a product coming within the act. (See D-24.)

D-23 Onion sets: Not a perishable agricultural commodity within the meaning of the act (S. 3045). (See C-13).

D-24 Peanuts do not come under the Perishable Agricultural Commodities Act. (S-4024.)

D-25 Peppers, sweet red, diced, packed in their natural juices with citric acid added, are a canned (hot pack) product not covered by the act.

D-26 Potatoes, french fried, frozen: The U.S. Court of Appeals, Ninth Circuit, under date of January 24, 1958, 15582, *Union Pacific Railroad Co. v. Ore-Ida Potato Products, Inc.*, held that potatoes which were washed, peeled, sliced, steamed, or washed, oil blanched at 350° F. for 1½ minutes and then quick frozen, were not fresh frozen vegetables, but were frozen cooked food. Therefore, the product is a food of a different character, which is not covered by the act.

D-27 Prunes: A dried plum. Not a perishable agricultural commodity within the meaning of the act.

D-28 Puree. (See D-4.)

D-29 Raisins: A dried grape. Not a perishable agricultural commodity within the meaning of the act.

D-30 Sauerkraut. (See C-3.)

D-31 Sprays: Not a perishable agricultural commodity (S-3400).

D-32 Vegetables, strained, frozen: Since the green beans, carrots, beets, spinach, peas, waxed beans, and sweet potatoes are cooked to some extent in addition to the blanch, then crushed into a pulp and strained before being frozen, they are not a perishable agricultural commodity within the meaning of the act.

D-33 Sugarcane: Webster defines sugarcane as a "well-known grass" and not as a fruit or vegetable. Based on this definition, we should say that sugarcane should not be considered as falling within the scope of the act.

D-34 Tomato plants cannot be considered as a perishable agricultural commodity (S-2402).

D-35 Wreaths cannot be considered a perishable agricultural commodity (S-3400).

(The following statements, letters, and telegrams were also submitted to the subcommittee:)

STATEMENT OF THE NATIONAL ASSOCIATION OF WHOLESALERS

The National Association of Wholesalers is a federation of 32 national commodity line wholesale associations. Several of our affiliated national groups distribute food and food products to the Nation's independent food retailers. The welfare of these retailers, our customers, is of vital concern to us, their supplying wholesalers.

The pending bill, H.R. 5023, authorizing an increase in the annual license fee under the Perishable Agricultural Commodities Act from \$25 to \$50, is therefore of great concern to us. If we correctly understand the original intent of the

Perishable Agricultural Commodities Act, it was designed to protect growers, shippers, and terminal receivers of fruits, vegetables, and frozen foods against unwarranted rejections of shipments and consequent failure to complete contract payments.

We do not quarrel with this objective. We do not believe, however, that the relationship between local food retailers and their local wholesale suppliers requires any Federal regulation or enforcement machinery whatsoever to prevent unwarranted rejections of shipments or enforcement of contracts. The day-to-day supplier-customer relationship that exists between local fresh fruit, vegetable, frozen-food wholesalers and their retail customers is for all practical purposes, an arm's-length series of transactions. If the customer is not satisfied with the supplier's products, he switches to another supplier. If the supplier is not satisfied with the promptness of payment of the customer, he ceases to solicit his business. No third-party arbitrator is necessary to the relationship, by the furthest stretch of the imagination to insure "performance of contracts" or "unwarranted rejections of deliveries."

The Nation's fresh fruit, vegetable, and frozen-food wholesalers are willing to continue to be covered by the law, and even to pay the proposed increased license fee if in the judgment of the committee this is necessary. We do feel very strongly, however, that our local independent retail customers should be exempt from the law provided they purchase a substantial portion of their fresh fruits, vegetables, and frozen-food stocks from wholesalers.

The proposal of the National Association of Retail Grocers of the United States, as set forth in the statement of their general counsel, Mr. Henry Bison, Jr., to your committee would seem to us to be a reasonable solution to the problem. If 90 percent or more of a retailer's purchases of fresh fruit, vegetables, and frozen foods are made from licensed wholesalers of these commodities, such retailer should be exempt from the license provisions of the law. If a retailer, or retail enterprise, purchases direct from growers, shippers, or terminal receivers, 10 percent or more of its fresh fruits, vegetables, or frozen foods, such retailer should be subject to the licensing provisions of the law.

We strongly recommend that your committee therefore amend the pending bill on page 2, after line 4, by adding the following language:

"(11) No person buying any perishable agricultural commodity solely for sale at retail shall be considered as a 'dealer' in respect of any such commodity in any calendar year: *Provided*, That not less than 90 per centum of his purchases of such commodity in such year are from one or more licensed wholesale suppliers. For the purpose of this subsection, the amount of such purchases shall be determined on the basis of net invoice cost to the retailer."

We can see no justification for inclusion of local retailers under the license provisions of this act except revenue requirements. Since local retailers purchasing 90 percent or more of their requirements from local wholesale suppliers in no way benefit from the inspection procedure, we cannot understand why they should be taxed, through license fees, to support that procedure.

If existing license revenues are inadequate to support the desired inspection procedures, we would suggest increasing the license fees to those who directly benefit. If nonbeneficiaries are to be taxed to support the program, why not all nonbeneficiaries? Why not support the entire procedure for inspection and contract enforcement out of general revenue funds through an increase in the U.S. Department of Agriculture appropriation?

Your serious consideration of the proposed amendment of the bill is respectfully requested.

STATEMENT OF THE UNITED STATES WHOLESALE GROCERS' ASSOCIATION, INC.

The United States Wholesale Grocers' Association, Inc., is the professional trade organization of wholesale grocers who supply approximately 125,000 independent supermarkets and food stores as well as institutional accounts throughout a large part of the United States. Many of our member firms sponsor retail voluntary groups totaling more than 9,000 affiliated independent retailers.

The retail customers of our wholesale firms for the most part either buy their fresh and frozen produce through our wholesalers or through produce wholesalers and frozen food wholesalers.

The pending bill, H.R. 5023, authorizing an increase in the annual license fee under the Perishable Agricultural Commodities Act from \$25 to \$50, is, therefore, of great concern to us. It is our understanding that the intent of the Per-

ishable Agricultural Commodities Act is to protect growers, shippers, and terminal receivers of fruits, vegetables, and frozen foods against unwarranted rejections of shipments and consequent failure to complete contract payments.

We do not believe that any useful purpose would be served by requiring such licensing of a retailer who looks to the wholesaler as his supplier of fresh and frozen fruits and vegetables and who does not make it a practice to buy direct from the growers or shippers. We feel certain that our wholesalers do not find it necessary that the Federal Government step in as a mediator to protect the wholesaler against unwarranted rejections of shipments and consequent failure to complete contract payments.

Requirement of an annual license fee whether \$25 or \$50 places an unnecessary burden on the local retailer except those retailers who deal directly with growers and shippers and do not receive the major part of their fresh and frozen perishables through a wholesale supplier.

We strongly recommend that your committee adopt the recommendations you received from the National Association of Retail Grocers of the United States, as set forth in the statement of their general counsel, Mr. Henry Bison, Jr.—“If 90 percent or more of a retailer's purchases of fresh fruit, vegetables, and frozen foods are made from licensed wholesalers of these commodities, such retailer should be exempt from the license provisions of the law. If a retailer, or retail enterprise, purchases direct from growers, shippers, or terminal receivers, 10 percent or more of its fresh fruits, vegetables, or frozen foods, such retailer should be subject to the licensing provisions of the law.”

Your favorable consideration of this proposed amendment to the bill is respectfully requested.

NEW YORK, N.Y., August 7, 1961.

Congressman GEORGE M. GRANT,
Chairman, Domestic Marketing Subcommittee,
House Office Building, Washington, D.C.:

Our 750 members in 50 States join in urging your committee to restrain an arm of the Federal Government from reaching unnecessarily into purely local transactions between a retailer and his wholesaler through H.R. 5023. Please consider favorable substance of provision advocated by Henry Bison, NARGUS general counsel, to exempt food retailers who buy frozen food requirements primarily from local wholesalers already licensed under Perishable Agricultural Commodities Act.

HARRY K. SCHAUFFLER,
National Frozen Food Association.

UNITED FRESH FRUIT & VEGETABLE ASSOCIATION,
Washington, D.C., August 9, 1961.

Representative GEORGE M. GRANT,
Chairman, Subcommittee on Domestic Marketing, Committee on Agriculture,
U.S. House of Representatives, Washington, D.C.

DEAR MR. GRANT: I am enclosing a telegram from Joffre C. David, secretary-treasurer, Florida Fruit & Vegetable Association, and a letter from Frank W. Castiglione, executive vice president, Western Growers Association, authorizing me to speak for their organizations in support of H.R. 5023.

As I indicated to you this morning during my testimony, I neglected to bring the letter and telegram with me and you suggested I send them to you.

Sincerely,

ALAN T. RAINS, *Executive Vice President.*

ORLANDO, FLA., August 1, 1961.

ALAN RAINS,
Executive Vice President,
United Fresh Fruit & Vegetable Association,
Washington, D.C.:

This will authorize United Fresh Fruit & Vegetable Association to speak for the Florida Fruit & Vegetable Association at the hearings before House Agricultural Committee on H.R. 7060 and H.R. 5023 on August 9 to 10. Since we concur with the views of your organization in support of this legislation.

JOFFRE C. DAVID,
Secretary-Treasurer, Florida Fruit & Vegetable Association.

WESTERN GROWERS ASSOCIATION,
Los Angeles, Calif., August 4, 1961.

MR. ALAN T. RAINS,
Executive Vice President,
United Fresh Fruit & Vegetable Association,
Washington, D.C.

DEAR MR. RAINS: The Western Growers Association represents the vegetable and melon growers and shippers of California and Arizona, who ship to the Nation's markets in excess of 300,000 carlots and/or trucklots annually. California and Arizona produce approximately 40 percent of the Nation's total of this perishable foodstuff.

Our industry fully endorses the amendments to the Perishable Agricultural Commodities Act proposed by H.R. 5023.

I shall appreciate it very much if you will so certify for us at the hearings to be held on this bill.

Yours very truly,

FRANK W. CASTIGLIONE,
Executive Vice President.

HOUSE OF REPRESENTATIVES,
Washington, D.C., August 8, 1961.

HON. GEORGE GRANT,
Chairman, Domestic Marketing Subcommittee,
House Committee on Agriculture.

DEAR COLLEAGUE: With regard to H.R. 5023, I respectfully bring to your attention that the Lyon Brokerage Co. of Minneapolis favors adoption of the amendment excluding sales agents handling frozen fruits and vegetables.

Sincerely,

CONGRESSMAN CLARK MACGREGOR.

UNITED STATES WHOLESALE GROCERS' ASSOCIATION, INC.,
Washington, D.C., August 11, 1961.

Re H.R. 5023.

HON. GEORGE M. GRANT,
House Agriculture Committee,
Washington, D. C.

DEAR MR. GRANT: We trust you will agree that to require the licensing of retailers who do not ordinarily deal direct with growers, shippers, and terminal receives of fresh and frozen fruits and vegetables would serve no useful purpose.

Therefore, to avoid placing an unnecessary hardship on the many local food retailers in your State and throughout the Nation, we urge favorable consideration be given to the suggestion as contained in the enclosed statement.

Sincerely,

HAROLD O. SMITH, Jr.,
Executive Vice President.

NORTH CAROLINA FOOD DEALERS ASSOCIATION, INC.,
August 8, 1961.

CONGRESSMAN HAROLD COOLEY,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN COOLEY: House Resolution 5023 introduced in the House of Representatives recently, will be detrimental to the merchants of America. The only person who needs to be licensed under the agriculture administration, in our opinion, is the farmer selling at wholesale to retail grocers.

I agree 100 percent with the idea of protecting the farmer who raises the food stuff and protecting the consumer who purchases the stuff, but we all know full well that the merchandise should be inspected at the source, and that 400,000 retailers in the United States should not be penalized by having to pay this \$50 tax, as they are already overburdened with taxes at present.

It is conceivable that the large operators can pay this tax and not be materially affected, but to the thousands of small store operators in the country, many

of them who are barely making a living and who deserve much credit for not being on public welfare, they would feel the pinch very much if they had to pay an additional license.

We trust that you will use your influence in seeing that this bill is not passed.

With kindest personal regards, I am,

Sincerely yours,

JAMES B. VOGLER,
Executive Vice President.

RALEIGH, N.C., August 11, 1961.

Congressman HAROLD D. COOLEY,
Chairman of the House Agriculture Committee,
Congress of the United States, Washington, D.C.:

As president of Tip Top Foods and vice president of the North Carolina Food Dealers, I have been authorized by the hundreds of independent food stores to ask you to put "thumbs down" on House Resolution No. 5023 asking for a \$50 license on retail grocers who are buying 90 percent or more of their produce from licensed dealers. We urge you to oppose this extra tariff on our group.

J. L. MORGAN.

KANSAS FOOD DEALERS' ASSOCIATION, INC.,
Arkansas City, Kans., August 17, 1961.

Hon. J. FLOYD BREEDING,
Representative, Fifth District,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN BREEDING: As you know, S. 1037 in the Senate and H.R. 5023 in the House have been introduced to permit raising the license fee under the Perishable Agriculture Commodities Act from \$25 to \$50 a year.

We respectfully urge you to vote for a National Retail Grocers Association (Nargus) amendment, which would exempt food retailers who purchase 90 percent of their fresh and frozen fruits and vegetables from one or more licensed wholesale suppliers.

The USDA under this PACA are not rendering any direct service to our retailers. All they are doing is sending fieldmen out to collect the licenses. I doubt if in the last 10 years a single retailer has made any request for their services.

We believe the people wanting and using this PACA service (namely the producers and shippers), should have their licenses raised to a point where they are financing it—not the retailers who are more numerous and are being asked to pay the same fee.

I will be happy to relay your vote on this retailer exemption amendment to the grocers of our State and I am sure they will be pleased to learn of your favorable action.

Sincerely,

LEE E. CIRCLE, *Executive Secretary.*

KANSAS CITY, KANS., August 18, 1961.

Congressman J. FLOYD BREEDING,
House Office Building, Washington, D.C.:

Urgently request House bill H.R. 5023 be amended to exempt food retailers who purchase 90 percent or more of their fresh and frozen fruits and vegetables from licensed wholesale suppliers.

ROY CAMPFIELD,
Thriftyway Stores, Inc.

MARTIN'S FINER FOODS,
Leawood, Kans., August 19, 1961.

Congressman J. FLOYD BREEDING.

DEAR SIR: I urgently request that House bill, H.R. 5023, be amended to exempt food retailers who purchase 90 percent or more of their fresh and frozen fruits and vegetables from licensed suppliers. I shall appreciate very much your help in accomplishing this necessary exemption.

GEORGE L. MARTIN.

RANDY'S MARKET,
Meade, Kans., August 18, 1961.

Mr. J. FLOYD BREEDING,
House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE: It has been called to my attention that there is a proposed amendment to bill H.R. 5023, which would exempt retail merchants that buy 90 percent or more of their fresh and frozen fruits and vegetables from one licensed supplier.

We urge your careful consideration on this matter and hope you can support the amendment.

Thanking you, we remain,

Yours truly,

R. H. RANDOLFE.

MURDOCK BROKERAGE Co.,
Albuquerque, N. Mex., August 16, 1961.

HON. THOMAS G. MORRIS,
House of Representatives,
Washington, D.C.

DEAR MR. MORRIS: We understand the Senate Agriculture Subcommittee is urging an amendment to the proposed bill which would exclude frozen food brokers from the licensing requirement under the Perishable Agricultural Commodities Act.

We would greatly appreciate it if you would use your influence on those who will hear the bill and urge them to report S. 1037 with an amendment excluding independent-contractor sales agents handling frozen foods or vegetables.

In the past there was a time in which such licensing was necessary, but since all national food brokers are local businessmen, such licensing, etc., makes it more difficult to do business and we know you want to relieve small business of as much redtape as possible.

Thanks for your cooperation in helping the passage of S. 1037.

Sincerely,

MARTIN L. MURDOCK.

Mr. HARDING. Thank you. The committee stands adjourned.
(Whereupon, at 12:25, p.m. the committee was adjourned.)



PERISHABLE AGRICULTURAL COMMODITIES

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HEARING

BEFORE THE

SUBCOMMITTEE ON DOMESTIC MARKETING

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 5023

FEBRUARY 26, 1962

Serial CC

Printed for the use of the Committee on Agriculture



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1962

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CONTENTS

Statement of:	Page
Bison, Henry, Jr., general counsel, National Association of Retail Grocers-----	10
Carroll, Hon. John A., a U.S. Senator from the State of Colorado----	28
Grange, George, Agricultural Marketing Service, U.S. Department of Agriculture-----	21
Rains, Alan T., Fresh Fruit & Vegetable Association-----	17
Rogers, Watson, president, National Food Brokers Association-----	2
Supplemental report to Congress by the Department of Agriculture on the Perishable Agricultural Commodities Act-----	30

PERISHABLE AGRICULTURAL COMMODITIES

MONDAY, FEBRUARY 26, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, at 10:05 a.m., pursuant to notice, in room 1301, New House Office Building, Hon. George Grant (chairman of the subcommittee) presiding.

Present: Representatives Grant, Hagen, Jennings, Matthews, Inouye, Harding, and Teague.

Also present: Representatives McIntire, May, Reifel, and Findley.

Also present: Christine S. Gallagher, clerk; Hyde H. Murray, assistant clerk; and John Heimbarger, counsel.

Mr. GRANT. The committee will come to order.

We are meeting this morning to continue an adjourned hearing on H.R. 5023. And in order that we may be brought up to date on this, I am going to ask Committee Counsel if he will, to make a statement concerning this legislation.

Mr. HEIMBURGER. Mr. Chairman, several days of hearing were held on 5023 last summer in the previous session of Congress. A number of witnesses appeared on the measure. Virtually all were in favor of the bill in general.

But the Food Brokers Association and the National Association of Retail Grocers proposed some amendments to the bill.

Now, the committee considered those at its previous hearings, and felt that it needed further study on the subject matter of these two amendments, so it reported the bill to the full committee without the amendments, with the recommendation that the bill be enacted with the amendments not in, but with the proposed increase in fee to operate only a short time, during which time the Department of Agriculture would be asked to conduct a further study of the subject matter of the amendments and report back to the committee.

The full committee, instead of reporting the bill as recommended by the subcommittee, deferred action on the bill, but instructed the chairman of the full committee to ask the Secretary of Agriculture by letter to conduct the study. This was done, and the results of that study were reported to the committee early in January, making certain recommendations as a result of the study.

So the meeting this morning is for the purpose of considering specifically the amendments proposed by the National Association of Food Brokers, by the National Association of Retail Grocers, and the further study of the Department on these two proposed amendments.

Mr. GRANT. Thank you very much, sir.

I believe the first witness we have this morning is Mr. Watson Rogers of the National Food Brokers Association.

Mr. Rogers, we will be glad to hear from you, sir.

Mr. McINTIRE. Mr. Chairman, I think the record will also show a list of other bills of a similar nature which were introduced. There was more than one, and I think I should mention this so that the record will show it.

Mr. GRANT. Yes, we will take judicial notice of it.

STATEMENT OF WATSON ROGERS, PRESIDENT, NATIONAL FOOD BROKERS ASSOCIATION

Mr. ROGERS. Mr. Chairman and gentlemen of the committee, I want to tell you that I again appreciate the opportunity to appear here before you.

If I may, I would like to tell you and the committee a little of my food background. I started in the wholesale grocery business when I was 18 years old. I started traveling on the road when I was 19. I was with this house 13 years. I was on charge of the first voluntary group of stores in the State of Oklahoma when I was still in my 20's handling their advertising and merchandising, then organized and ran the Oklahoma Retailers Association for 5½ years, started the Oklahoma Food Journal, and was its editor.

I have been with the Food Brokers Association for the past 18 years, and have served as their president since 1946. And I feel I have a rather close knowledge of the food industry of this Nation, and I want you to know that as I am making some of my statements here.

Mr. GRANT. We believe you qualify as a witness.

Mr. ROGERS. Thank you very kindly, sir.

I appreciate the opportunity to again appear before you to discuss H.R. 5023. You may remember from my previous appearance that our members are greatly concerned about this bill and feel very strongly it should be amended to be in harmony with present day methods of food distribution. For example, I told you of the tremendous growth and development of the frozen food industry that took place after the Packers Agricultural Commodity Act was passed.

There is no segment of the economy of this Nation that has changed more in the last 31 years than has the food industry. That is why laws passed 31 years ago do not necessarily apply today. That is why we beg of you gentlemen to take into consideration these vast changes when you are amending the Perishable Agricultural Commodities Act.

I don't intend to repeat the statements I made when I appeared before you at the previous hearing. But there are a few additional points I would like to call to your attention. As you may know, the National Food Brokers Association was organized in 1904. It is one of the oldest food groups in the Nation. Our members are made up of what we call the legitimate food brokers and they handle the sales of the majority of the processed foods of this Nation. That includes frozen foods. For a great many of our members, however, frozen foods make up a very minor part of their sales.

We feel that our members have carried on a very reputable business, representing in many instances the same manufacturers for a great many years. We are proud of the relationship we have with our

buyers and sellers. We are also proud to say there has been a phenomenal growth in food brokers' sales in the last 10 years. This is because the food manufacturers, the food processors in this Nation, are discovering the food broker is in a position to do an economical and marketing job that they cannot do for themselves.

These manufacturers employ food brokers on a regular continuous sales basis—not for occasional hit-or-miss deals. Our members do not deal with one packer today and another one tomorrow. They maintain a continuous relationship with the firms they represent much the same as a salaried employee works for his employer regularly.

According to a recent survey, the average member food broker represents 20.3 manufacturers. He is their exclusive sales agent in his small trade territory. Because of the very nature of their business it is most difficult for our members to see why they have to pay a Government tax for a right to sell processed farm products. The processor who employs them is the one who purchases the raw materials from the farmers and growers. This processor is licensed and must abide by all the provisions of the Perishable Agricultural Commodities Act.

Having been continuously in the food business myself for almost 38 years, I have personally seen the value of the Perishable Agricultural Commodities Act and what it has done to protect the growers of these products. I am sure no one in the food industry would want you to take any action that would weaken that act or destroy the safeguards it was designed to establish.

The amendment we propose will not remove any of these safeguards and will not weaken the law. In our opinion 99 percent of the food industry of this Nation, the people who know what goes on in this business, would approve of our suggested amendment.

However, I will admit we have one large exclusive frozen food broker who said he was in favor of remaining under the license provisions. When questioned by another broker about it, he indicated it helps freeze out the little brokers and thus is a great help to his type of operation. But I am sure that it is not the intent of Congress to force many of these fine marketing people to refrain from selling the farmers' products.

I have heard it said that the problem in this country may not be so much one of overproduction but one of underconsumption. If this is an example of the programs regularly advocated by the Department of Agriculture, I can see why the farmers of this Nation face a chaotic condition. Their job, it appears to me, is to encourage the expansion of marketing the farmer's products rather than discouraging it.

There is a vast difference between the operations of the true frozen food brokers and brokers in the produce field. The frozen food broker acts solely as the agent of the packer or the processor. He does not act as the agent of the buyer even though he provides the buyer with many services on behalf of this principal, the processor. His full allegiance is to the seller. It is the seller who sets the price.

The true frozen food broker performs the same service as the manufacturer's own sales organization. The salesman is paid a salary, the food broker a commission. Yet the broker is presently required to have a Perishable Agricultural Commodities Act license, but the salaried salesman is not.

In trying to keep the frozen food broker under its licensing provisions, it has been argued that they should be licensed because of the perishability of frozen fruits and vegetables. This is not a valid argument because frozen food items covered by the Perishable Agricultural Commodities Act are only a minor part of the total frozen food brokers' sales. Items such as fish and fish products, frozen citrus concentrates, beef and poultry products, bakery products, TV dinners, all types of meat pies, plus hundreds of other frozen food items found in today's modern supermarket are not covered. In not one instance can be shown where these other frozen food industries would have been better served had the legitimate true food broker been operating under a license. It is estimated that less than 10 percent of the frozen food brokers' sales are items covered by the Perishable Agricultural Commodities Act.

Further, items covered by this act will be far less than 1 percent of food brokers' total sales. As one member pointed out, the only item he sold that came under the act was frozen okra. Others have given examples where only one of their items comes under the act, and that their total brokerage received on this item was not more than the license cost them. This, you can understand, would be very irritating.

In the grocery industry, as distinguished from the produce field, the seller who employs the food broker has complete responsibility. He is responsible for his products, their method of processing, their quality, and the method and terms of sale.

The food broker does not buy or sell in his own name and does not have custody or possession or other control over the products sold by him for his sellers.

I can cite a recent example which confirms our statement that true frozen food brokers are not a part of the produce industry and should not be considered subject to this act. On February 9, USDA held a Perishable Agricultural Commodities Act Conference in New York. We were not invited. The sponsors felt it was not applicable to us. Yet when it comes to licensing, these same people want the frozen food brokers covered. It is very odd that we are not considered a part of the industry when it comes to plans and programs but only considered a part when they want our money.

The USDA representatives have told you, and I quote from a statement of Mr. George Grange at your last hearings, that the exemption of frozen food brokers—

would mean that no requirements could be established concerning the type of confirmations which they issue or the records which they are required to maintain.

That statement is the crux of the matter they say, implying that without the frozen food brokers' records there is no way of knowing what goes on in many of these transactions.

They do not have a correct working knowledge of the actual operations of the food industry as distinguished from the produce field. The food broker regularly maintains the information relating to the order. This is true for all products sold by food brokers and not just frozen foods. In other words, food brokers do not need to be licensed to force them to prepare proper records. They do so in any case and their records are available.

Furthermore, the law requires all licensees to keep appropriate records. That means the processor must keep such records as well

as the buyer. If any controversy comes up, the needed information will be available in three places even if the frozen food broker is not licensed.

Mr. Grange mentioned that they were afraid that if food brokers were exempted it would mean that—

no requirements could be established concerning the type of confirmations which they issue * * *.

In the processed food industry it is not customary for the food broker to issue such confirmation. They submit an order memorandum to the seller with a copy to the buyer. The actual confirmations are customarily issued by the sellers. Our industry feels that from a legal standpoint the food broker is not authorized to make such confirmation without involving other liabilities and responsibilities. And the packer wishes to reserve these for himself.

At this point, I want to give each of the committee members sample copies of two versions of the forms used by food brokers. Keep in mind that these were refined and developed from forms that were in use for possibly a century or longer—long before there was a Perishable Agricultural Commodities Act. And as I said earlier, these were used for all products sold by food brokers and not just the comparatively small volume of frozen fruits and vegetables.

Another reason why our members do not want to be licensed is that the Perishable Agricultural Commodities Act administrators have gone far beyond the actual provisions of the law in order to strengthen their control over the licensees. I am sure that is not what you in Congress want or sanction.

For example, in the regulations they wrote they state:

Brokers may operate as the agent of the buyer, seller, or of both parties (sec. 46.25(a)).

In another part of their regulations they wrote:

Brokerage fees may be charged to only one of the parties to the contract unless by mutual agreement the parties agree to split the brokerage fees (sec. 46.26(b)).

Gentlemen, the Perishable Agricultural Commodities Act itself does not make these statements and another law of the land, the Robinson-Patman Act amendment to the Clayton Act, which Congress passed in 1936, specifically prohibits this kind of action under section 2(c). Furthermore, the courts, including the Supreme Court, have upheld the validity of section 2(c). The courts have held that the broker could not serve two masters. He could not act as agent of both parties in the same transaction whether or not these two parties agreed. Furthermore, the courts held that the agent of one party to the transaction could not be compensated by the other party whether in whole or in part. Yet these USDA people want to go over the heads of Congress, the Supreme Court, and the lower courts and write the law as they want it to be. And that is another reason why our people want to get out from under this Perishable Agricultural Commodities Act licensing.

There is still another danger to these interpretations of the Perishable Agricultural Commodities Act regulations which we want to eliminate by removing the true frozen-food broker from these licensing provisions. Because they represent a Federal department, they are looked to as authorities by various State agencies. Their inter-

pretations are regarded as gospel and are adopted by the State agencies whether or not sound. This just compounds the injustice.

I am sure you will agree it is a most unfortunate situation and one that should not be permitted to continue. The answer to it is to remove the true frozen-food broker from the provisions of the Perishable Agricultural Commodities Act as we outline in our amendment. I should like to give to each of you gentlemen a copy of the amendment which we propose. It is attached to your statements, gentlemen. I hope you will agree that it is a most necessary one and one that will not in any way weaken the effectiveness of the Perishable Agricultural Commodities Act.

In our opinion this amendment would satisfy the needs of practically everyone in the food industry and would in no way change the act's application to growers, packers, and to those in the produce field. I hope that you will agree this is a logical and just amendment and will serve as a credit to this Congress when it is passed.

And I have one or two other comments I would like to make. I mentioned our concern over USDA's interpretation of the law as regards section 2(c) of the Robinson-Patman Act. This is just another example of the difficulty of operating under this law.

NEBA's constitution and bylaws mainly spell out the definition of a food broker as follows:

A food broker is defined as an independent sales agent who performs the services of negotiating the sale of food and/or grocery products for and on account of the seller's principal, and who is not employed or established by, nor an affiliate or subsidiary of, any trade buyer, and whose compensation is a commission or brokerage paid by the seller.

The USDA talks about brokers representing buyers and sellers. I know of no broker in our industry who represents the buyer. I cannot emphasize too strongly that it is unfair to our industry to make it operate under rules and regulations that are mainly established for an entirely different industry.

In my statement I referred to our concern over the contradiction in the Robinson-Patman Act. I would like to inform you that 5 or 6 years ago some of our people had a discussion with the officials of USDA on this matter, in fact we wrote them a letter in June of 1957. We just got the standard reply, that they would take our recommendations into consideration when they were revising the rules. But they did not do anything about it, and we feel, again, that mainly their decisions are entirely for the fresh fruit and vegetable industry.

The USDA people have indicated that as long as a product is under the act, all people dealing with that product should be under the act.

I believe if you will check you will find that is not the case today. Some of our largest purchases of frozen foods are not under the act. It is my understanding that hotels and restaurants are not required to take out licenses. I could be wrong, but that is my information. Yet they are tremendously large purchasers of frozen foods.

Now, in USDA's report, dated January 12, it says:

The act itself cites five separate provisions covering unfair practices in which brokers may not engage. Excluding brokers from the licenses would remove all effective means of enforcing the applicability of the act to brokers.

In checking these sections to which this quote refers I cannot see anything which would change our operations regardless of whether or not true food brokers were licensed.

In my statement I especially referred to recordkeeping, and feel it is not a problem at all as far as we are concerned.

These main provisions do not apply to frozen foods as handled by food brokers any more than they apply to canned foods or other products sold through the grocery outlets. They are mostly written for the fresh fruit and vegetable industry.

And speaking of the fresh fruit and vegetable industry, I hope that when Mr. Rains testifies he will tell you we should not be covered by this act. I feel such a statement from him would certainly be in line with the reports from their recent convention held in New York City.

I would like to quote from Supermarket News referring to this meeting. This is a well-known trade paper which almost everybody in the food industry reads, and I would like to quote from this article here in big headlines, "Fear of Growing Federal Role in Industry Highlights Parley."

Fear of increasing Federal controls over the production industry marked the 58th annual meeting of the United Fresh Fruit & Vegetable Association here last week. Nearly 2,000 wholesale distributors and suppliers, shippers, brokers, and other representatives of the fresh produce industry were warned of Government's plan to play a larger role in the control of their activities. Several bills pending in Congress came under attack.

To keep true frozen food brokers under the act would be the best example I know of of fostering needless Government control.

Mr. Rains' group is not the only food convention criticizing needless Government control.

As president of this association it is my responsibility to attend most of the major food conventions held in this Nation. I have never before seen the concern and the critical speeches on these convention programs. The food industry feels it has done a marvelous job in serving the consumers of this Nation.

Evidently, there is a fear of a trend of needless Government control which would hamper it from continuing this streamlined operation. I feel it is the attitude such as the U.S. Department of Agriculture in opposing this needed amendment to the Perishable Agricultural Commodities Act that is contributing to this great fear among food industry leaders.

Mr. Chairman, I could probably go on for a long time, but I know your time is limited. I appreciate the opportunity of appearing here. I would be glad to try to answer any questions you have.

Mr. GRANT. Mr. Hagen?

Mr. HAGEN. Mr. Rogers, what is the history of complaints under the act against food brokers?

Mr. ROGERS. I mentioned, I think, at the previous hearing that I personally hadn't heard of one in 10 years. Now Mr. Grange, I think, brought some out before. I forget now the details. We never hear of this act in our shop. And I am sure if there was any trouble from the members they would be screaming to us.

Mr. HAGEN. What is this emphasis on confirmation? What is a confirmation?

Mr. ROGERS. The reason I said this is because they have made a big statement about our records, and they claim they need our records where we confirm the orders. What I have tried to point out is that in most instances we don't confirm the orders, we are sales agents, we

place their order on this memorandum like we gave you. That is submitted to the manufacturer or the processor; it is his responsibility to confirm it to the buyer.

Mr. HAGEN. Say that a seller had a complaint from the ultimate purchaser, the retail store, now, they have to be licensed, is that correct?

Mr. ROGERS. Yes.

Mr. HAGEN. His complaint would lie really against the seller, not against you, because you are his agent?

Mr. ROGERS. We are an agent of the seller. We have to tell the people what the manufacturer tells us are in those packages. You can't see what they are; this merchandise is packaged. We have to take the processor's words, and we have to pass that on to the buyers. So it is the seller's responsibility if something is wrong.

Mr. HAGEN. Can you conceive of a situation where a seller, employing you as his agent, would ever have a complaint against you under the Perishable Agricultural Commodities Act?

Mr. ROGERS. Never, because they wouldn't let us represent them, if we had to be under Government control to do what is right we couldn't represent them. Most of these sellers we have represented for years and years, we have a close relationship with them, and any time a broker does anything wrong with one seller, that is against his reputation, and more than likely he would be fired by all of the principals he represents.

Mr. HAGEN. I would think under those circumstances the only people who would seek to keep you in would be the buyers.

Do you know of any desire among buyers of frozen foods, for example, to keep the brokers licensed?

Mr. ROGERS. None whatsoever. I don't know of a single one.

Mr. HAGEN. Thank you.

Mr. GRANT. Any questions?

Mr. McINTYRE. Mr. Rogers, what are the provisions in these bills which expand the authority of Perishable Agricultural Commodities Act? You were quoting from the trade journals as to the fear of expansion of Federal authority and making reference to bills that were before the Congress—

Mr. ROGERS. I just read that much. They have got a bunch of bills here. I don't think that was specifically referring to Perishable Agricultural Commodities Act.

Mr. McINTYRE. What are the provisions of the bills which we are considering here which expand the authority of Perishable Agricultural Commodities Act?

Mr. ROGERS. I don't know of any.

Mr. McINTYRE. I don't either.

Mr. ROGERS. I don't know of any.

But I have said that their interpretations in our opinion expanded the authority that they had when this bill was passed years ago. I say they have gone far beyond what Congress intended in their interpretations.

Mr. McINTYRE. I realize that. But the bill doesn't extend the authority for increasing the fee?

Mr. ROGERS. That is right.

Mr. McINTYRE. Largely because this program is self-financed, and always has been, and I don't think anybody proposes that it be otherwise, do you?

Mr. ROGERS. No. I will tell you frankly, Mr. McIntire, the balance of your bill, I don't know whether it is good or bad, we didn't even get into it, because we think it applies to the produce field, it just shouldn't apply to us, and what you and these people want is certainly all right with us. We have no comments to make on it.

Mr. McINTIRE. I make this observation, and this isn't any criticism in any sense of the word, but the fact that the act is opened up for amendment by virtue of this legislation offers an opportunity which you folks have every right to take advantage of to amend the act in your own interest, and this is really the crux of the matter, is it not?

Mr. ROGERS. This is an action that we feel should have been taken several years ago. We have been talking about this, and others have been talking about this act. It may have been good 31 years ago, but it isn't good today, that is all the provisions.

So that is true, we have been talking about this, our members asking why should we be under it. While you are rewriting the law anyway, why don't you bring it up to date to meet modern day food distribution.

Mr. McINTIRE. Has your organization in the recent past passed any resolutions proposing amendments to the Perishable Agricultural Commodities Act?

Mr. ROGERS. The only amendments we suggested were to their interpretations. And that was in 1957.

Mr. McINTIRE. But not amendments to the act?

Mr. ROGERS. Not amendments to the act. We discussed this at our last convention in Chicago—which, incidentally, is the largest food convention held in the world.

And at our officials' insistence I devoted a considerable part of our annual report to this problem. And the convention went on record as authorizing our executive and advisory committees to establish this policy, which they have done.

Mr. McINTIRE. It is a matter of timing, the act is open for amendment, it is a matter of timing in the interest of your people?

Mr. ROGERS. That is right.

Mr. McINTIRE. And not that the proposals are expanding the jurisdiction of the act or changing the eligibility or anything of that sort?

Mr. ROGERS. Mr. McIntire, we haven't even gone into it, we are not produce people, we are not in that business, we are in a separate business, we feel this is mainly for them, and anything you feel they need and they feel they need, we have no quarrels with at all, we just want out from under.

Mr. McINTIRE. But so far as the proposed legislation is concerned, it neither subtracts nor adds to the jurisdiction of the act as far as it is applicable under present interpretation to your industry, is that right?

Mr. ROGERS. As far as we know, that is true.

As I said, though, our industry has changed in 31 years. That is what someone said before, we passed the law 31 years ago, and we shouldn't change it now. But why do we have Congress here today? Conditions change and we need different laws.

Mr. HAGEN. Has there been some change in food brokerage in that 31 years. For example, an original mixed type of operation justifying inclusion but which has now disappeared.

Mr. ROGERS. Not so much. Thirty-one years ago we did have some of our members in fresh fruit and vegetables. But now we have a rule that you can't speculate, and we have expelled some for doing that. And because of the nature of fresh fruits and vegetables that has eliminated our people from selling those products. We are in an entirely different type of business.

Now, the frozen food industry has changed materially.

Back in 1931 when this bill was passed the frozen food industry was in its infancy. Mostly it was packing big barrels of strawberries and other fruits for the preserve industry, or something like that. So there wasn't a big difference between products fresh and iced and those that were frozen. That is why I think they decided then to put frozen in the law.

But the frozen food industry has changed. We handle them mostly under brand products just like the other products. So there has been a big change in the frozen food industry.

Mr. GRANT. Thank you very much. Your time is up.

Mr. Henry Bison, the National Association of Retail Grocers.

STATEMENT OF HENRY BISON, JR., GENERAL COUNSEL, NATIONAL ASSOCIATION OF RETAIL GROCERS

Mr. BISON. Mr. Chairman and gentlemen of the committee, we appreciate your kindness in allowing us to appear here today and offer additional views on H.R. 5023.

Last August, we testified before this subcommittee on the pending bill. At that hearing, we requested you to approve inserting in the bill an exemption from the licensing provisions of the Perishable Agricultural Commodities Act covering those retailers who purchase 90 percent or more of their fresh and frozen fruits and vegetables from one or more wholesalers licensed under the act.

The purpose of this proposal is to eliminate the Perishable Agricultural Commodities Act license tax on retailers who purchase the bulk of their requirements from their local wholesalers who are licensed. The retailers would have no appreciable dealings with growers, growers' agents, commission merchants, truckers, or terminal markets. They would be buying almost all of their merchandise in local transactions from local licensed wholesalers. This change, we said, would not conflict with the purpose of the act to protect growers, shippers, and terminal receivers from unwarranted rejections and failure to carry out contracts. The retailers we want exempt are not primary receivers.

Since the original hearing on H.R. 5023 last August, two new developments have taken place.

First, the Department of Agriculture has conducted a survey of Perishable Agricultural Commodities Act licensees. A report on this survey is now before you.

It is interesting to note that while the Department requested licensees to provide information and views on various aspects of the law's operation, it did not ask for an opinion on the retailer's proposal. I think it is a reasonable assumption that this omission was not accidental, and that if the question had been asked it would have resulted in material evidence adverse to the views of those who prepared the questionnaire.

On page 2 of the survey report, it is stated that no one has proposed that all retailers, regardless of how large, should be excluded from the Perishable Agricultural Commodities Act. This is certainly true and we are happy to see the Department recognize this fact.

We also agree with the statement on page 3 of the survey report that—

the present formula (used to determine when retailers are subject to licensing) of "purchases of 1 ton or more of fresh or frozen fruits and vegetables in excess of 20 times per year" results in some licensing quirks in relation to total annual value of purchases by these firms.

The survey report further states on page 3:

Evidently variations in the pattern of purchases (e.g., deliveries once a week versus three times per week) have caused some retailers to be licensed whose total annual purchases were relatively small.

This admission by the Department of Agriculture that both the present law and the pending bill covers retailers who should not be required to purchase a license is greatly appreciated by us. As you know, this is precisely what we have contended for some time.

On page 7 of the survey report the Department of Agriculture recommends that dollar value of purchases rather than tonnage purchased be used to determine which retailers are subject to license. It also recommends that all retailers be exempt from the license requirements whose dollar purchase of commodities covered by the the act are \$50,000 or less annually.

From a technical point of view, the proposed wording of the amendment to the present act, as stated in paragraph A on page 7, is ambiguous and confusing. It does not define what measure is to be used in determining the monetary value of purchases. Enumerable questions on how the value of purchase is to be calculated are left unanswered. Is the figure to be net invoice cost of the merchandise paid by the retailer minus all discounts, allowances, and service charges? Or does it include additional charges, fees, allowances, discounts, et cetera, aside from the value of only the merchandise? It might even be questioned whether the retail sale value of merchandise is the proposed basis for calculation. It is extremely difficult to know with any certainty. The words "cost" or "value" are, as you will see, missing from the Department's proposed amendment. The question of how a retailer is to calculate when his purchases exceed \$50,000 is left totally unanswered.

We suggest that the Department's proposal is so vague and uncertain that it will produce tremendous confusion for retailers with all the potential liabilities that go with it. This is certainly no solution.

We also call attention to the fact that the Department's proposal is based on purchases in any consecutive 12-month period. This means retailers must make a tedious and expensive calculation every month of the year covering the previous 12 months purchases. The act's coverage provisions for retailers are presently based on a calendar year. The words "in any calendar year" are now in subparagraph (6)(B) of the first section of the act which the Department's proposal amends. But it now proposes that retailers be covered based on their purchases over any consecutive 12-month period rather than a calendar year basis. This places retailers in a more difficult position than they are under the present law.

As a matter of practical operation, the Department's proposal places still another difficult burden on retailers. The \$50,000 purchase proposal applies to Perishable Agricultural Commodities Act commodities only, and provided also that each commodity at some time was shipped across a State line. Retailers would be required to know all the commodities under Perishable Agricultural Commodities Act and the transportation history of each. To protect themselves from being required to purchase a license, retailers would have to keep records on each month's purchases of Perishable Agricultural Commodities Act commodities that crossed a State line. In some cases they could not determine this information without checking with their wholesaler. It is unrealistic to expect retailers to know all the commodities that are under Perishable Agricultural Commodities Act, as well as those that are exempt because their form is materially changed by processing. People who have been in the produce industry all their lives and handle nothing but such products do not have such knowledge.

We believe that it would be less expensive for retailers to pay for a Perishable Agricultural Commodities Act license each year than to attempt to prove their exemption under the Department's proposed amendment. Its practical effect in exempting retailers—which at least in some degree the Department now concedes is desirable—will be a mere trifle. We urge the committee not to be misled by the Department's proposal.

Gentlemen, an analysis of the situation will show that the basic reason why the Department of Agriculture is opposing retailers' efforts for an exemption from the license tax under the Perishable Agricultural Commodities Act is money. The heart of the matter before you is who is going to pay for the administration of this law. This is the crux of the argument.

The prime desire is not so much to license local retailers as it is to collect license fees from them. The license itself is not as important as the fee. This is what really counts.

If you doubt this, ask the Department if it will consent to reducing the license fee for retailers buying 90 percent or more of their Perishable Agricultural Commodities Act commodities from licensed wholesalers to some nominal sum, such as \$1 per year.

Or ask if they would approve requiring such retailers paying only one license fee, instead of making payment on a yearly basis.

The Department does not want any more retailers exempt because they fear it will mean operating on a reduced budget. Some large fruit and vegetable shippers and receivers take the same position because they might be required to pay more for their license.

As you know, the law is supposed to be self-financing. This means that the money for its administration must come from license fees. It is easy to see that the more people licensed the less each has to pay. It is also obvious that the more people licensed, the more funds the Department will have to spend.

We wonder why those in the fruit and vegetable industry who benefit from this law and regard it as a necessary Government function are not more willing to pay for the cost of its administration.

One of the major reasons we object to the present law is that independent food retailers and their wholesale suppliers are forced to pay for duplicate licenses. Whereas, in contrast, a completely

integrated operation performing both retail and wholesale functions is taxed only once. This results in a ridiculous and indefensible situation where an independent food store is taxed the same amount for the cost of Perishable Agricultural Commodities Act as an entire company operating thousands of supermarkets with total sales running into billions of dollars. And the situation is the same for large shippers and receivers handling many millions of dollars of Perishable Agricultural Commodities Act merchandise each year. They, too, can escape with just one license covering their entire operation and pay the same fee as a grocer purchasing a few thousand dollars of merchandise each year.

I would like to depart from my statement to say this, gentlemen, that today many of the food brokers operate in groups where their wholesalers are in close alliance with them. The wholesaler must be licensed and each of the retailers must be licensed. This is multiple licensing, whereas if they operated as an integrated corporation owning all the warehouses and all the stores they would only have to have one license. We claim that that is indefensible.

When the act was passed in 1930, the vast majority of retail food distributors were not organized into voluntary and cooperative buying groups as they are today. These retailers are closely joined or associated with their supply house. In essence, they are one operation tied together in close harmony. These retailers have more than adequate financial arrangements to cover payments for their purchases. In many cases they have a deposit with their suppliers equal to three times their weekly purchases. There is no need for a Federal law to license them so they will pay their bills.

The same can be said for retailers supplied by independent service wholesalers. Here, too, there is a close—almost daily—contact between both parties operating in the same trading area.

Gentlemen, to prove that many wholesalers of fresh and frozen fruits and vegetables are not in favor of their retail customers being forced to pay a Perishable Agricultural Commodities Act license tax, I ask permission to submit for the record at the conclusion of my testimony letters from almost 70 such wholesale suppliers from 19 States supporting our position.

And may I depart from my statement a moment to submit to you one of the letters that I will ask you to incorporate in the record. It comes from the Pacific Fruit & Produce Co. It is one of the largest wholesalers of fruit and vegetables in the country. They have branches in all medium- and large-sized towns in the West, and they have 16 such branches in the State of Washington. And I will submit to you a letter from this company signed by its vice president supporting our proposal.

In addition, I will, with your permission, submit a letter of support from the Produce Packaging Association, Inc., and from the Oakland Wholesale Fruit & Produce Merchants' Association of Oakland, Calif. In addition, the record will show that the National American Wholesale Grocers Association, the United States Wholesale Grocers Association, the National Frozen Food Association, the National Association of Wholesalers and the Cooperative Food Distributors of America also support our position. This should leave no doubt in your mind where the majority of wholesalers stand on this issue.

Before concluding, allow me to emphasize that the gross injustice of the Perishable Agricultural Commodities Act license tax has aroused thousands of retailers as never before. Their sense of fairplay has been rightly outraged by the efforts of the Department of Agriculture and a small minority in the fruit and vegetable industry to perpetuate what must be the most unfair, inequitable, and discriminatory tax ever enacted into Federal law.

It has been said that the amount of the Perishable Agricultural Commodities Act tax involved is not very large. In answer, I can only remind you that the same was true of the infamous tea tax imposed on the colonies in 1773, and it provoked something more than mild disapproval.

Since our last appearance before the committee, and in an effort to be constructive, we have endeavored to improve our proposed amendment to H.R. 5023. At this time, I would like to offer a suggested draft as a part of this statement.

And I depart from my statement a moment to say that in our amendment attached to our statement we are providing that in order for a retailer not to be licensed, he would have to buy from a wholesaler that is licensed under the act, and a wholesaler that has his place of business in the State where the retailer is located, or in the same standard metropolitan area.

Now, standard metropolitan area is defined by the Bureau of the Budget, and it is clearly defined by the geographic demarcations, and there is no question about what the standard metropolitan area means. We have introduced that in order to assure you that what we are trying to stop is the Federal Government interfering in local commerce, in our opinion. And this is what we are trying to stop, the local transactions should be exempt from Federal control.

I hope, gentlemen, that we can settle this disagreement, because we would like to see this law continue. We think it has a very useful purpose. And I can tell you that many of our people, indeed all of them, will continue this battle against what they think is an unfair and inequitable and unjust tax for so long as it remains on the books.

May I conclude with this statement, that I am reliably informed that the chairman of the full committee, Mr. Cooley, will introduce this afternoon a bill which incorporates the amendments offered by the National Food Brokers Association and the National Association of Retail Grocers, a bill that will be introduced some time this afternoon.

I want to conclude by thanking this subcommittee most sincerely for the fair hearing and for the exhaustive consideration you have given this matter. We are very, very grateful to you for listening to our statement.

Thank you again.

Mr. GRANT. Thank you very much for your statement.

Do you feel that with the elimination of both of these groups that there would be sufficient funds to carry on the activities of the Department in administering this law?

Mr. BISON. I think, Mr. Chairman, that that effort ought to be made. And if there is more money needed, they can report it back to your subcommittee and to the full committee and then make their case, substantiate it, and then you will make the changes if the case is made. That is our opinion, that this is the way it ought to be,

and if there is something wrong with that there is a remedy available without delay.

Mr. GRANT. Any further questions?

Mr. HAGEN. I would like to ask you to give an example by name of one of these integrated operations where they do both their own wholesaling and retailing.

Mr. BISON. Well, a classic example—and I don't wish to name one particular organization, there are many of them—a classic example is the A. & P. Tea Co. And, mind you, gentlemen, I am not making a case against A. & P., but the question was asked, and I feel I should respond.

The A. & P. Co. has annual retail sales of well over \$5 billion a year. This is not just their produce, this is all sales. And they have over 4,000 stores. And they have I don't know how many warehouses.

No; it isn't fair in our opinion to tax that giant organization—and we are not arguing against bigness, don't misunderstand me—but it isn't fair to tax that organization that buys as much produce as they do on the same basis as you tax a small grocer buying from a wholesaler. The wholesaler is licensed, he deals with the terminal market.

Mr. HAGEN. What percentage, if any, of their business is done with wholesalers?

Mr. BISON. I don't know, but more and more, as the Perishable Agricultural Commodities Act conference will show, Mr. Hagen, more and more purchases are direct, they bypass the wholesaler. This goes on more and more.

So, actually, this would help wholesalers. If you say to our retailers, if you buy from a wholesaler, then you don't have to have a license, but if you bypass the wholesaler and buy direct from a grower, shipper, commission shipper, or terminal market, then you are going to have to get a license. Then you can see there that this would encourage distribution through wholesalers.

And we feel that wholesalers are very efficient in all these industries.

Mr. HAGEN. A. & P. for example, they just have one license, is that right?

Mr. BISON. I don't know that, Mr. Hagen. They may have subsidiaries. A. & P. may have one corporation incorporated in Delaware and one in New Jersey, but they only have one license for the corporation.

Mr. HAGEN. And they need very few in relation to the total volume?

Mr. BISON. They need very few.

And let me say this, gentlemen, if there is any way to defend that method of taxation, I have yet to hear of it. I don't think you can defend it, I don't think the Department can defend it, I don't think anybody can. And it certainly arouses our people to know that the effort is being made to perpetuate that taxation.

Mr. TEAGUE. Mr. Bison, I have an entirely open mind on this. You have made a very forceful presentation. I understood you to say that you were going to offer some 70 letters for the record.

Now, I see no necessity of printing 70 letters in the record and causing the Government that expense, so I suggest that you pick out two or three typical ones, if you want any of them.

Mr. BISON. I agree, we wouldn't want 70. But I would like, if you or your colleagues want to look at these letters, we are going to make them available to you, because we want you to understand, it

is not just the retailers that are asking you to do it, it is our suppliers and the wholesalers who are asking it, too.

Mr. GRANT. Mr. McIntire?

Mr. McINTIRE. Mr. Bison, what provisions in the bill would you consider are provisions expanding the authority of the PACA beyond its present authority in the act?

Mr. BISON. Mr. McIntire, I didn't hear the very first part of your question.

Mr. McINTIRE. What provisions in the bill do you interpret as amendments expanding the authority of the Perishable Agricultural Commodities Act beyond the present statute?

Mr. BISON. Mr. McIntire, there is no provision in H.R. 5023 that expands the jurisdiction of the Department. But may I qualify my statement by saying this, that our concern is on the basis of principle. We think that the law is wrong as is, and we are trying in the best way we can to seek an amendment to it so that local commerce as we define it—not as the Department defines it, but as we define it—is exempt from this Federal regulation and control, because not only is it unnecessary but it is discriminatory.

Mr. McINTIRE. I appreciate your statement.

But my interest was to further inquire as to the extent you have communicated with your members. Have you pointed out that the legislation before the committee is not an expansion of the act?

Mr. BISON. To what extent? From memory I can't give you any concrete example of that, but in every statement we have issued on this bill we have always pointed out that the issue here, that is, that the bill proposes an increase in the annual license fee.

I think some of our people, Mr. McIntire, feel this way about it, too, that while the proposed bill doesn't increase the jurisdiction of the Department in this area, as those fees go up—and they went up from \$10, they started out at \$10, and now the effort is to give the Secretary the authority to make it \$50—this creates a problem which we think should have the serious consideration of Congress.

Mr. McINTIRE. Well, this is another point. The interest that I have in making this inquiry is because like other Members of Congress, I have had many letters in response to your communications to your membership, and this is entirely appropriate. I have written back two of these people who have written me asking them two questions: One is, Are they not required to have a license? And the other one is what their understanding is of the proposals. They have come back in many instances saying that they are not required to have a license. They wrote to me because they were afraid that this bill was expanding the authority of Government in connection with the jurisdiction of the act. This is the understanding that they have conveyed to me.

Do you think this is an appropriate understanding on their part?

Mr. BISON. Well, Mr. McIntire, let me say, first of all, that nothing we have said would give—would be a basis for that conclusion on their part, if such is—

Mr. McINTIRE. Where would they have gotten it?

Mr. BISON. I don't know.

But let me point out that when they say they are not subject to a license, they don't have to take out a license, this could be wrong, they might very well have to take out a license and not know it.

Mr. McINTIRE. The only thing is they are not licensed now?

Mr. BISON. Right. That may be because an inspector hasn't visited them.

Let me point something else out, gentlemen. As you get into this matter you will find that there are retailers who are on the borderline, and maybe they are subject to having a license, and maybe they are not, it is very hard to say, as the Department itself admits in its statement, on one, two, or more per day, 21 times or more a year.

The question, of course, is so difficult for these retailers to decide whether they covered or not. When a Perishable Agricultural Commodities Act inspector comes into their store and says, do you have a Perishable Agricultural Commodities Act license and he doesn't know that he is talking about, then this question always comes up, which is easier, is it easier to give in and buy the license or try to fool the Government? And a lot of times they will buy the license though they don't know what it is all about, and even though they may not be covered.

I really do not know. But our basis, Mr. Matthews, as a principle we just do not want the Federal Government getting into local commerce, and we do not want it particularly when the tax is so unfair as this is.

Mr. HAGEN. I want to ask you a delicate question.

If we exempt some retailers as you propose, would you object to making chains pay a license fee on every retail outlet?

Mr. BISON. We would not object, no.

I would say this, Mr. Hagen: that if you do it on the basis of number of stores, you might run into some difficulty, because an operator may have 10 small stores, and he might be purchasing as much as an operator with 1 big store. So if you are going to do it on the basis of the amount of interest he has in the law, maybe you ought to do it on the basis of the value of purchases, not stores, because, as you know, a store can be a small store or a tremendous store, and you would be counting it on the same basis, and it would not be fair.

We have no objection to that at all; I am just pointing that out. We are not suggesting it, because, as I said, in the earlier hearing, gentlemen, we are not trying to get somebody else's license fee raised, we are not trying to do that. We are simply asking for our freedom, that is all we are asking for. And that is why we are here.

Mr. GRANT. Thank you very much for your testimony.

Mr. Rains, the next witness, please, sir.

STATEMENT OF ALAN T. RAINS, FRESH FRUIT & VEGETABLE ASSOCIATION

Mr. RAINS. Mr. Chairman and gentlemen, I am going to speak off the cuff this morning.

You will recall, I prepared a statement for you gentlemen when we discussed this legislation last summer, and as was the case then, I am speaking for the Western Growers Association by authority of a wire received from Mr. Frank Castiglione, executive vice president of that organization:

This is your authority to represent Western Growers Association in support of H.R. 5023, Perishable Agricultural Commodities Act bill, February 26.

I have a similar telegram from Mr. Joffre David, executive vice president of the Florida Fruit & Vegetable Association in Orlando, Fla.:

Will greatly appreciate your representing Florida Fruit & Vegetable Association in your testimony in support of H.R. 5023, Perishable Agricultural Commodities Act bill, February 26.

I intend to speak rather briefly this morning, gentlemen. I think that our position was fairly well covered in the testimony that I submitted previously. There are two or three things, though, that I attach considerable importance to, and that is the reference to local transactions, and the connotation that goes with such reference.

Now the fresh fruit and vegetable industry is a huge and involved industry, as you gentlemen well know. About 1,500,000 carlot or carlot equivalents of these products are in commerce each year, with a retail volume of about \$8.5 billion.

Now, our people, the fresh fruit and vegetable fraternity, transact most of these sales by conversation, either personally or on the phone. A local transaction can very well be a conversation personally on the curb in a market, in a gateway market such as Chicago, let us say, between a carlot distributor and a buyer, relating to a car of merchandise in Wyoming on its way to Chicago. The specifications of that car, the manifest, the size, grade, quality, what have you, would be a subject of discussion, and the first buyer, for economic reasons, either to make a profit or to reduce a loss, or he may feel that he has too much of a particular commodity, would sell to this second buyer on a negotiated basis, as you and I are carrying on a conversation right now.

That, in my opinion, could be classified as a local transaction. Yet it is not the exception, this sort of thing goes on regularly in this business. Certainly that sort of a transaction should be covered. It is basic to trading in fresh fruits and vegetables.

I could recite any number of instances. Let's take the one of a salaried representative of a big buyer at a shipping point. As he was in the office of the shipper or seller, he would negotiate for the purchase of a carlot or several carlots of merchandise. I am afraid some people would consider that to be a legal transaction. Certainly it is not, in my opinion, and would need to be covered under Perishable Agricultural Commodities Act if our industry is to be protected.

The other reference that has been made in the record refers to Perishable Agricultural Commodities Act as a collection agency. Well, nothing could be further from the truth. It is true that Perishable Agricultural Commodities Act resolves differences of opinion, controversies, and the result is a payment of an invoice. But that is secondary to the basic function.

If you and I were in a controversy over any sort of a transaction, if I felt that what you sold me was not what you represented it to be, I would be reluctant to pay you, and we might end up in court. Here we have a situation where licensees may and do resolve their differences through this agency, they are respected, they are honored, and if Perishable Agricultural Commodities Act says to the buyer, the contract specifications were met, you owe the seller, the controversy is closed and the payment is made. To that extent it is a collection agency.

I would say that in contrast to a great many Federal laws that the Perishable Agricultural Commodities Act is not a WPA for lawyers, because I cannot calculate the millions of dollars of legal expenses that have been saved our industry as the result of a privilege of a licensee to take a controversy to Washington.

And, incidentally, this can be done on a telephone basis, and differences of opinion can be resolved in the matter of two or three telephone calls.

Now, the retailer amendment has caused considerable concern in my industry. And if you will recall, my testimony related basically to the amendment that our industry had developed with the Department.

Now, we do not want to tell the Department nor you gentlemen where to draw the line in licensing retailers. Despite the fact that retailers have been covered since the inception of the law, we have great confidence and abiding faith in the Department, the Administrator of Perishable Agricultural Commodities Act, and the General Counsel's Office. And the amendment that was under consideration when we met before, in the opinion of the Department, would open the floodgates and allow even the largest national chains to trade without a Perishable Agricultural Commodities Act license.

That, gentlemen, we simply could not stand. And I do not believe that you would want it that way either.

I am not debating the merits of the Perishable Agricultural Commodities Act amendment as submitted by Mr. Bison at all. All I say is, gentlemen, we cannot—this huge industry of ours which is self-sufficient is not favored with price supports, it maintains its own dignity, maintains its own economic foundation, and it could not operate if this Perishable Agricultural Commodities Act bill is emasculated.

I believe that the differences of opinion can be resolved. I believe that the Department and you gentlemen can work out language of an amendment that would be satisfactory to Mr. Bison and his group, and not injure the fresh fruit and vegetable industry.

We have an abiding faith in you gentlemen, too, I might add.

Now, with respect to the food brokers, I did not expect the notice that Mr. Rogers gave me. I appreciate reference to my convention. Here again we are sort of bystanders. But a great many of our service wholesalers particularly handle a great volume of covered frozen foods.

I would suggest that if the frozen food brokers have a problem, they would be well advised to follow the same procedure that my industry followed several years ago when we were discussing some problems with the Department relating to Perishable Agricultural Commodities Act administration. And there evolved from those discussions the Perishable Agricultural Commodities Act Conference Group which has been referred to this morning. That was organized, created at the request of my industry, so that we could resolve differences of opinion, and it has worked beautifully. A year ago it was expanded and retailers were invited.

I see no reason why it cannot be expanded further, or why individual groups interested in Perishable Agricultural Commodities Act could not be granted the same courtesy that we have been granted.

I would say this, however: So far as the wholesalers that I am familiar with and whom I represent are concerned with respect to their

purchases of covered frozen foods, that they would prefer, I think they would almost be adamant to maintain that all functionaries dealing with in any respect at all covered merchandise, covered foods, should be licensees.

One personal reference to my retiring president, who is the chairman of the board and chief executive officer of one of the largest service organizations in the Southwest, who said that he would not consider dealing with a broker that was not licensed.

Now, I recognize Mr. Watson's organization as being one of the finest in the business, it is under very, very fine management, that I am sure of. But I am not sure whether all of the food brokers presently engaged in handling transactions in covered frozen foods are his members, or that all of such functionaries will in the future be members of Mr. Watson's organization.

So we will have to bear in mind that we are considering legislation that would affect all people operating in the capacity of a broker regardless of their trade association affiliation.

One more thing, and that is the reference to the theme of my convention just concluded in New York. We did, as Mr. Rogers has reported, maintain a theme that we felt there was a rapprochement of Government in our industry and we resented it. That did not, however, relate to the Perishable Agricultural Commodities Act; it related particularly to labor.

I believe, Mr. Chairman, that that concludes my statement, and I would be happy to undertake to answer any questions you gentlemen might have.

Mr. GRANT. Thank you, Mr. Rains.

Any questions?

Mr. TEAGUE. Mr. Rains, I believe you stated that you hope this committee, and you felt this committee could work out an amendment which would be satisfactory to Mr. Bison and to your group.

I might suggest it would be very helpful to us, to this committee, if you and Mr. Bison could get together and give us a draft of something which is satisfactory to both of you.

Mr. RAINS. Well, I would be very happy to assist in any way possible. But we would be operating under a very heavy handicap, because I am not a lawyer, and as you know, Mr. Bison is a very able lawyer.

I made that suggestion because honestly, gentlemen, I believe that this is a matter of semantics and an understanding of how my industry operates. Reference to the local transaction would probably present a picture in the minds of many people, a wholesaler who regularly serves a retailer down the road. Well, that is one thing. But when you start to define that and put it into law, then you are going to have to call on able lawyers. And that is why I say we have an abiding faith in you gentlemen and in the General Counsel's Office and in the Department. And I am sure that Mr. Bison, working with these gentlemen, can work something out.

The only thing we ask, do not open the floodgates, do not emasculate this law.

Mr. GRANT. Further questions?

Mr. Inouye.

Mr. INOUE. Mr. Rains, I have a letter here from a broker. I would like to read two paragraphs and ask for your comments:

Food brokers who have represented the canned food principals for many years are now handling the same commodities in frozen form, and selling them to the same buyers. To require Perishable Agricultural Commodities Act licensing of food brokers who sell such frozen products is most unfair, for it singles out one form of produce food from another.

In addition, there are some frozen food producers who have their own salaried sales organizations in some areas and brokers in others. Both sales teams are performing the same service, one is paid a salary and the other a commission. Yet the broker must have a license, but the salaried salesman does not.

Mr. RAINS. I will try to recall the first part of your question, sir. What commodity was it that this gentleman referred to in the letter?

Mr. INOUE. I have no idea, sir.

Mr. RAINS. The reason I asked, sir, was that one of my broker members called me and recited virtually the same set of circumstances, and it happened that this broker was handling the Dole account. And of course the canned pineapple and what have you would not be covered. But he said now that they have expanded their line to frozen pineapple concentrate, if I am to continue to have their business and handle their account, they insist that I handle the frozen pineapple concentrate, which means that I have to have a Perishable Agricultural Commodities Act license, and he resented it.

My informant was considerably relieved when I told him under the law this gentleman would not need a Perishable Agricultural Commodities Act license to handle the frozen concentrate.

On the reference to the licensed salary representative of the frozen food packer as opposed to the independent food broker handling frozen covered products, I can say only this: That from the point of view of the buyer, the buyer would be protected under Perishable Agricultural Commodities Act, for dealing with a salaried representative, because the salaried representative would be responsible—or rather, the frozen food packer would be responsible for the acts of his salaried representative, and he in fact is acting as a licensee.

I would think that the frozen food broker would not bear the same responsibility as to either party to the transaction as would the salaried representative.

Mr. INOUE. Thank you very much.

Mr. GRANT. Questions?

(No response.)

Mr. GRANT. Thank you very much for your statement, sir.

I believe the next witness is Mr. George Grange.

We will be glad to hear from you, Mr. Grange.

STATEMENT OF GEORGE GRANGE, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. GRANGE. Mr. Chairman and gentlemen, I do not have a prepared statement to submit this morning.

The Department's report in response to your request for further information on certain specific questions has, as you have previously indicated, been filed with the committee.

This report, to the best of our ability, bears directly on the subject matter at hand, and contains much factual material based on replies received from the licensees who responded to our questionnaire con-

cerning some of the elements that you have heard this morning from the previous witnesses.

Therefore I will not try at this juncture to repeat or paraphrase the material which is included in the Department's report.

I would like to mention just a few important items.

It has bothered us during the past month, as brought out here this morning, that for some reason or other there has been an impression created that the bill under consideration broadens the scope of the act. We too have received many letters from different firms and individuals around the country, primarily retailers, and we, among other things, have checked to see whether those that we heard from had a Perishable Agricultural Commodities Act license. A very high percentage of those we have heard from do not have a Perishable Agricultural Commodities Act license, and to the best of our knowledge are not subject to a Perishable Agricultural Commodities Act license under the present law.

What actually is under consideration is what firms should be subject to the Perishable Agricultural Commodities Act. We are not concerned here with a tax, we are concerned not with a license as such, we are concerned simply with the question of which ones should be subject to the responsibilities that are laid down by the Perishable Agricultural Commodities Act. And, the means of implementing that of course is through the licensing. All firms who deal in wholesale quantities in interstate commerce are now subject to the act. This includes shippers, wholesalers, jobbers, brokers, commission merchants, and retailers.

In our opinion, each one of them is extremely important if we are to carry out the basic fair trading principles which are laid down by the Perishable Agricultural Commodities Act. The fact that they buy from another licensee does not relieve them from their responsibilities under the act.

For example, it is just as illegal and unfair to reject without reasonable cause when purchasing from a licensed wholesaler as when purchasing from an unlicensed grower.

Most of our complaints are between two licensees, a complaint on the part of a shipper or a wholesaler that a buyer rejected without reasonable cause, a complaint on the part of a buyer that another licensee failed to ship in accordance with his contract.

In our opinion, it would be entirely fallacious to exclude retailers or any other group from the Perishable Agricultural Commodities Act on the ground that they buy 90 percent or more of their produce from licensees.

This factor simply has nothing to do with carrying out the fair trade practices of the Perishable Agricultural Commodities Act. The great majority of retailers and terminal market receivers buy practically all of their production from licensees. To say that retailers do not need the protection of the Perishable Agricultural Commodities Act is telling only half the story. This is saying that they do not need protection in order to obtain their rights.

However, a licensee also has certain definite responsibilities under Perishable Agricultural Commodities Act. It has just as bad an effect on the market for a retailer to reject a load of produce without reasonable cause as it does for a wholesaler to reject a load. And it has just as bad an effect whether he bought it from a licensee who may have

been located around the corner from him a couple blocks away as if he dickered with someone on the street, as Mr. Rains was referring to, and the load happened to be located in Wyoming at the time their local deal was being made on the streets in Chicago.

Only the largest retailers would be subject to license under the Department's proposal, as contained in our report of January 10.

This would cover only about 1 percent of the 234,000 retail firms in this country, somewhere between 2,000 and 2,500 retail firms out of the total. However, this 1 percent of the firms probably do about two-thirds of the total grocery business in the country. The remaining 99 percent which would be exempted account for less than one-third of the total business.

These retail firms certainly should be regarded as large in our opinion. Mr. Bison has belabored the difficulty of applying the recommended \$50,000 purchases per year. In my opinion the difficulty would not be nearly as great as he envisages. The question of what would be used for cost of purchases, as we discussed with Mr. Bison and his president at the February 9 meeting, is something certainly that should be spelled out in our regulations, and not in our judgment something that we should try to get into in sufficient detail in the basic legislation itself, whether we were using net invoice price or some other criteria.

Also, the great bulk of the firms are clearly going to fall below the \$50,000 or clearly above the \$50,000. It is only going to be in the very minority of cases where you have the question of whether they fall just over or just under the line.

So that as far as this causing difficulty for many firms, in my judgment that just would not be so.

Also, as you gentlemen will recall from the report, 78 percent of the retail firms that replied stated a preference for having the licensing criteria based on dollar value of purchases rather than on the present one, which is stipulated by law and not by the Department, as was implied, of 1 ton 21 times or more per year.

With regard, Mr. Hagen, to your question concerning the matter of the supplemental fees for each outlet, or perhaps charging an additional fee dependent upon volume of business, as we point out in our report, and give the reasons why, we think that either of those approaches would be rather inequitable in many cases, or rather difficult to administer.

And in our discussions at the February 9 meeting, as I recall, both Mr. Bison and the president of the National Association of Retail Growers who were there, supported, or certainly did not object to, the Department's recommendation that supplemental fees for each outlet should not be charged, and neither should the fee be varied, dependent upon the dollar value of business being done by each licensee.

With regard to the matter of the licensing of frozen food brokers, I would just like to say that the frozen food representatives were not invited to the February 9 meeting, because it was clearly understood that this meeting was confined to the fresh produce.

We realize there are differences between fresh and frozen produce. We have recommended to the various associations—and there are several of them in the frozen food field—for several years that we would like to form an advisory group with them in the same manner

as we have with the fresh fruit and vegetable industry. As yet that arrangement has not been consummated. We sincerely are interested in following it through. It goes considerably beyond the question of the legislation itself. It has to do with rules and regulations and interpretations under the act which would be as effective as possible in applying to the frozen food industry.

Many frozen food brokers who are now licensed, I am sure, are not members of the National Food Brokers Association. Much of the testimony that Mr. Rogers gave had to do with the fact that if they comply with the bylaws of his organization, then they would comply with many of the provisions of the Perishable Agricultural Commodities Act.

We have in the present law the provision that it is unfair for a broker to—this is in the statute itself—it is unfair for a broker to make a false or misleading statement, it is unfair for a broker to misrepresent grade or quality, it is unfair for a broker not to remit collections promptly to his principal, when he is doing the collecting for his principal.

As stated in the Department's report, it is simply our conclusion that as long as the product itself is covered by the Perishable Agricultural Commodities Act, then each of the important factors in the business, including brokers, should also be covered.

Insofar as the matter of contribution by brokers and retailers to the present receipts under the act, they are rather minor. We obtain about 2 percent of our total revenue from frozen food brokers. We obtain approximately 10 percent of our total revenue from the licensed retailers.

This, gentlemen, is not a question of money. I would like to re-emphasize that. It certainly is not a question of money. It is a question of having those factors in the industry continued under license whose volume of business is such or the nature of their business is such that it is necessary to have them covered in order to effectuate satisfactorily and properly the provisions of the Perishable Agricultural Commodities Act.

Thank you very much.

Mr. GRANT. Thank you very much, sir.

Any questions?

Mr. HAGEN. Are you familiar with this bill that Mr. Cooley is supposed to introduce?

Mr. GRANGE. No, sir.

Mr. HAGEN. What is your total budget?

Mr. GRANGE. Our total expenditures last year were slightly in excess of \$800,000.

Mr. HAGEN. I assume that these fees are deducted from income taxes and/or passed on to the consumer. So why don't we eliminate fees and support the program out of general appropriations? Would the various elements of the industry object to such a change which would seem to make the program less controversial?

Mr. GRANGE. Mr. Hagen, the Perishable Agricultural Commodities Act is a unique regulatory law in the fact that it is supported by collections rather than by appropriations.

Mr. HAGEN. Well, the NLRB handles essentially the same function in a different activity, and they are supported by appropriations?

Mr. GRANGE. Yes, sir; practically all regulatory laws to my knowledge are supported by appropriations. The industry representatives

that have appeared in the past—and I know that previous amendments to the law—have indicated that it is their desire to continue the present arrangement. Some of them have made the statement that they would rather take their chances with the House and Senate Agricultural Committees rather than the Appropriation Committees insofar as the adequacy of the revenue was concerned. This is something that was developed by the industry itself; they look at it as being their law and their act, and we are providing service to them under it.

They feel as we do, that they have a very definite interest at stake in this law. And we work with them as closely as we know how in carrying it out, just as satisfactorily and effectively as we possibly can.

Personally, I think the fact that they do support the administration of the act by the license fee has contributed, Mr. Hagen, very materially to this spirit of coordination and cooperation which, contrary to the impression you may have received this morning, I think basically has existed through the great bulk of the fresh and frozen fruit and vegetable industry.

Mr. HAGEN. Thank you.

Mr. GRANT. Does this legislation materially increase the license fees?

Mr. GRANGE. The legislation would authorize the Secretary of Agriculture to charge up to \$50 per year license fee. The present limitation, Mr. Grant, is \$25.

Mr. GRANT. Is it the same on a retailer as a broker?

Mr. GRANGE. Yes, sir. We have stated that, based on our present costs, we would have to increase our license fee approximately \$11 per year. When the bill is enacted we would propose immediately, because we are running significantly into the red, and we are about to run out of money, to increase the license fee probably to \$36 per year. We would select the \$36 because it is evenly divisible by 12, and it facilitates the matter of carrying out our licensing operations.

Mr. GRANT. Counsel wishes to ask a question.

Mr. HEIMBURGER. Do the committee members have any further questions?

Mrs. MAY. I have a question for Mr. Grange.

Actually my question to Mr. Grange is to his entire Department, as we are considering this bill. Certain questions have arisen about the present administration of the act and regulations. This refers to a case I have in my own district. As a result, there has been a great deal of doubt expressed on this new legislation because of certain things that have transpired under the administration of the present act. In particular, Mr. Chairman and Mr. Grange, I am referring to a shipper of deciduous fruits and vegetables in the State of Washington who recently wrote me regarding a case that has been before your Department since 1960. I will discuss this case very briefly, if I may quote from Mr. White's letter.

In 1960 Mr. Dimond of the Department of Agriculture Regulatory Branch made a preliminary statement or finding in this case in favor of another fruitgrower, Mr. Joseph, of Yakima, Wash., Joseph Northwest of Yakima, Wash., and I quote from the opposing litigant's letter:

The decision rendered therein was against us on every point, and in studying it we found that the findings of fact did not conform to the real fact of record in most instances.

And it goes on in this paragraph of the letter to state his specific objections to the finding.

The White Co. prepared a 13-page statement setting forth their objections in detail, which in December of that year, 1960, the 31st, they submitted again to your Department through Mr. Dimond. And on January 13, 1961, they received a letter from your office acknowledging receipt of this statement of December 31, and granting a stay order for reconsideration. And then in just something like 60 days, about a month after there was a change in administration, they were all at once advised that decision had been made, that their application for reconsideration had been dismissed.

This dismissal order was signed, of course, by Mr. Flavin, who has originally granted the reconsideration order. My correspondent testified that when this decision was completely reversed that the dismissal order was very brief, it covered only four short paragraphs, and it did not refer in any way to this 13-page statement in support of reconsideration. He also points out that the Department had had a year to prepare their order, and certainly sufficient time to set forth in their findings of fact every important fact advanced by either party.

Then he felt that here they certainly, their company certainly had a real case for full consideration of the statement they had made and on which they had been granted original reconsideration.

According to this letter the firm took it up again with Secretary Freeman and was told that the decisions of Mr. Flavin were final, and I guess he has accepted this decision. But he comes to this conclusion in his letter to me:

The difficulty we have experienced in trying to secure justice for our growers has convinced us that there is a crying need for some changes in the laws and regulations of this particular Department, or changes perhaps in the way they are administered.

I would just like to say here that I am not familiar with all the details of this case, because I have not had a full statement from the Department. My point is that if we are experiencing difficulty under the present wording of the act, due to the way it has been administered we may jeopardize amendments to provide better regulations. This is an important Government department, and it has important protective responsibilities. It may be that we are creating a hostility and resistance that would not occur if there were more careful analysis of some of these decisions.

Again, may I assure you that I am not attempting to judge merits of the decision in this particular case. But it is a classic example of how misunderstanding thwarts good legislation. I do not quarrel with the Department's finding, I just feel that the respondent here has good basis for complaint and would appreciate a full statement from your Department on it so that I might answer him satisfactorily.

That is all, Mr. Chairman.

Mr. MATTHEWS. May I ask one brief question?

Mr. Bison at a previous hearing requested us to approve an exemption from the licensing provisions of the Perishable Agricultural Commodities Act those retailers who purchase 90 percent or more of their fresh and frozen fruits and vegetables from one or more wholesalers licensed under the act. Now, then, as I understand, the Department is willing to recommend that all retailers be exempt

from the license requirement whose dollar purchases of commodities covered by the act are \$50,000 or less annually.

Mr. GRANGE. Yes, sir.

Mr. MATTHEWS. Now, Mr. Grange, my question is, Could you give me an idea as to whether or not there would be more retailers covered under your recommendations or more covered under Mr. Bison's recommendations?

Mr. GRANGE. I don't know as I can give you a very good answer, Mr. Matthews. Under the Department's proposal it is our estimate, based on the information we have available, that approximately 1 percent of all retail firms in the country would be subject to license.

Mr. MATTHEWS. Let me emphasize that, just 1 percent of them?

Mr. GRANGE. Just 1 percent.

Now, as to the effect of the amendment recommended by Mr. Bison, he has changed it from the one that he previously submitted to include the location of the wholesaler. The original amendment as presented by Mr. Bison, as we stated in our report, in our judgment would exempt practically every retail firm in the country regardless of how large it is. With the modification, it would cover some firms now that would have been excluded under his original proposal. How many would be excluded I have no way of knowing. How would you deal with State lines and how would you ever learn whether a particular retailer was or was not subject to license I am not clear in my mind at this time. It would be extremely difficult without a survey or study, as Mr. Bison stated—I concur with him on this point, that it would be extremely difficult without such study or survey to make it an affirmative statement as to the impact of his proposed amendment.

Mr. MATTHEWS. Thank you, sir.

Mr. GRANT. Counsel?

Mr. HEIMBURGER. I have a few questions, Mr. Chairman.

Mr. Grange, do you know approximately what \$50,000 of this covered commodity would sell for at retail?

Mr. GRANGE. The usual figure for retail markup for produce based on sales price is 30 percent. That would mean that the total gross margin on \$50,000 would be approximately \$20,000 per year.

Mr. HEIMBURGER. So that what we are talking about here is a retail license of not to exceed \$50 a year for the purpose of selling \$20,000 a year or more roughly of the covered food?

Mr. GRANGE. The total sales price would be \$70,000, the gross profit would be \$20,000 a year, of which not more than \$50 tax deductible would be paid for a Perishable Agricultural Commodities Act license fee.

Mr. HEIMBURGER. Just one more question. Mr. Bison seemed to believe that it would be difficult to figure out what retailers might be subject to licensing under the \$50,000 a year purchase requirement. Wouldn't it be substantially more difficult to figure out what retailer would be covered under the proposal that Mr. Bison has made with respect to purchase of 90 percent of covered commodities from particular wholesalers?

Mr. GRANGE. In my judgment it would be considerably more difficult. We have a difficult one to apply now. In our judgment the proposed \$50,000 would be much simpler than the present one. The retailer records are kept in terms of dollars and not in quantity. We do not anticipate any particularly troublesome problems in applying the \$50,000 criteria.

Mr. HEIMBURGER. In the case of the 90 percent criteria, however, no matter how large or how small a retailer was, you would have to determine, first, what his total purchases for any year were of the covered commodities, and then what percentage of these purchases he made from a licensed wholesaler in the State or in the standard metropolitan area, regardless of the size of the retailer, this would have to be done?

Mr. GRANGE. I think we would have many inequities too, because where they happened to be located would determine whether they were subject to license. And we could have some firms that were considerably smaller, I believe, than others, who would be required to be licensed, just because of the pattern of their procurement.

Mr. HEIMBURGER. That seemed to me to be possible too.

Thank you, Mr. Chairman.

Mr. GRANT. I notice there that you stated that on a retail handling of approximately \$50,000 worth of perishable fruits and vegetables he would probably have a gross net of \$20,000. Is that taking into account the loss through spoilage and decay, and so forth?

Mr. GRANGE. No; this is a gross markup, Mr. Grant, that is normally used in speaking of retail margins. This will vary considerably, depending upon the product. But on an overall basis I have been told that this 30 percent of their sales price is what is commonly accepted as being an estimate of the average gross markup.

Mr. GRANT. Thank you very much.

Before we close, I have a statement here from Senator Carroll of Colorado that he wants inserted in the record, which will be done, if there is no objection.

(The statement of Senator Carroll follows:)

STATEMENT OF HON. JOHN A. CARROLL, A U.S. SENATOR FROM THE STATE OF
COLORADO

PROPOSED AMENDMENTS OF THE PERISHABLE AGRICULTURAL COMMODITIES ACT TO
PROTECT INDEPENDENT COLORADO GROCERS

Mr. Chairman, I appear before you this morning on behalf of the small, independent grocers in Colorado.

The small, independent grocers in my State have what I consider to be a valid grievance against the administration of the Perishable Agricultural Commodities Act.

I am going to propose that the act be amended to cure what we consider to be a discriminatory condition.

Before I describe the problem in the State of Colorado, let me emphasize that our small, independent grocers fully support the purposes of the Perishable Agricultural Commodities Act. They encourage its full implementation.

What they do object to is the unfair imposition of an excessive amount of the financing of the Perishable Agricultural Commodities Act on the small, nonchain grocer.

I know that the Agriculture Department intends to recommend to your committee that the Perishable Agricultural Commodities Act be amended to change the licensing criteria for retail grocers. As I understand it, under the proposed USDA amendment, grocers who purchase more than \$50,000 worth of fresh or frozen fruits and vegetables each year would be subject to paying the license fee.

While there is no doubt that this change to a "dollar volume" criteria will be an immeasurable improvement over the old cloudy regulations of "1 ton or more (of the commodities) in excess of 20 times per year," it is still discriminatory against the independent grocer.

Under the proposed USDA amendment 63 independent Colorado retail grocers would be licensed.

However, at the same time, the Perishable Agricultural Commodities Act, unless further amended, would still permit the big Colorado grocery chains to

operate with one license covering their hundreds of stores, most of which are many times larger than the independent retailers "down the block" who would have to be licensed.

Here is what Mr. Fred S. Fishburn, general manager of the Associated Grocers of Colorado, told me a few days ago:

"If the Perishable Agricultural Commodities Act is amended to require licensing of grocers purchasing over \$50,000 of fresh or frozen fruits or vegetables, 63 of our member stores would be affected.

"We do not agree with the proposal, because our members are still discriminated against because the chain headquarters takes out one license for the distribution and not any for the retail units while we take out one for our distribution warehouse and under the new proposal 63 of our members would be affected and need the license and many more will come under it as they grow and do more business."

The USDA admits that the 300 large grocery chains in the country (doing 39 percent of all retail grocery business) should be licensed, because they affect the code of fair trading practices under the Perishable Agricultural Commodities Act.

I don't think anyone disagrees with this.

The Associated Grocers of Colorado, a 27-year-old organization of privately owned, small, independent grocers, agrees that its own distribution warehouses in Denver and Pueblo should be subject to licensing, because it too, like the chain wholesale center, is affected by the code of fair trading practices with the fruit and vegetable farmer.

But it is hard to understand why the AG member stores should be subject to licensing. They draw their stocks entirely from one central supply source in the exact same manner as a branch store of a major supermarket chain. The branch store of the chain, however, is exempt from licensing, even though it may do three times the volume of business of its AG competitor across the street.

This to me seems to be pure and simple "discrimination."

The 637 independent grocers in the Rocky Mountain region ask simply for equitable treatment.

They should not be penalized because they do not belong to a large national chain.

They should not be penalized because they espouse and put into practice the spirit of private ownership and free competition as exemplified in a "small business."

It would seem to me that the Department of Agriculture and the Congress would encourage competition in retail food marketing, rather than place more restrictive burdens on the small-business man who challenges the giant, corporate food chains with a bit of competitive spirit.

I make two alternative proposals for amending the Perishable Agricultural Commodities Act, Mr. Chairman, both of which I will submit in proper form to committee counsel.

First, I propose that the act be amended to exempt from licensing, independent retail grocers who in a year purchase all of their fresh and frozen fruits and vegetables from the same wholesale source. This would cover a marketing organization of hundreds of small, privately owned grocery stores who buy their stocks cooperatively from one central supply source.

Second, if in the wisdom of this committee it feels that the purposes and objectives of the Perishable Agricultural Commodities Act are best served by licensing all retail grocers who purchase a certain "dollar volume" of fresh or frozen fruits and vegetables, then I propose that the Perishable Agricultural Commodities Act be amended to provide for licensing of unit stores within a grocery chain that meet the "dollar volume" criteria. This amendment would "equalize" treatment between grocery chain stores and privately owned, small business groceries.

Mr. Chairman, I thank you for your courtesy in hearing me today, and if the bill before you (H.R. 5023) is amended as I recommended, to protect the small, independent grocer in Colorado, I assure you I will do all in my power to see to it that my colleagues in the Senate understand and support the action of the House.

Mr. GRANT. Thank you very much.

Mr. McINTIRE. If it is appropriate, could the report of the Department under date of January 12 be made a part of the record, or should that just be made part of the file? If it is not too extensive,

I think it would be helpful to have it in the record itself. I ask unanimous consent that it be included in the record.

Mr. GRANT. Very well.

(The report referred to follows:)

SUPPLEMENTAL REPORT TO CONGRESS BY THE DEPARTMENT OF AGRICULTURE
ON THE PERISHABLE AGRICULTURAL COMMODITIES ACT

During the 1st session of the 87th Congress, two bills, S. 1037 and H.R. 5023, were introduced to amend the Perishable Agricultural Commodities Act. During August 1961, hearings on these bills were conducted by the subcommittee of the Committee on Agriculture and Forestry of the Senate and the Subcommittee on Domestic Marketing of the Committee on Agriculture of the House of Representatives. These bills were supported by most of the large associations which represent the fruit and vegetable industry. The National Association of Retail Grocers of the United States and the National Food Brokers Association proposed that the act be further amended to exempt certain retailers and frozen food brokers from its jurisdiction.

As a result of these proposals, the Senate committee requested the Secretary of Agriculture to investigate the feasibility of variable or supplemental fee rates and to review the definitions now contained in the act that determine which retailers are subject to license. It was also requested that a study be made to ascertain if a dollar value standard rather than tonnage purchased would be more desirable and realistic in determining the licensing liability of retailers. Subsequently, the Senate passed S. 1037 with the added provision that the annual license fees of retailers and frozen food brokers would remain at \$25 while the license fees for other licensees could be increased up to a maximum of \$50 to provide the funds necessary to administer the act.

The House committee also requested the Department of Agriculture to study certain aspects of the act as discussed below:

1. TO WHAT EXTENT SHOULD RETAILERS BE REQUIRED TO BE LICENSED UNDER
THE ACT?

The present retailer licensing formula "purchases of 1 ton or more of fresh or frozen fruits and vegetables in excess of 20 times per year" is a very discriminating one. Under it, only 1½ percent of the retailers in the country are licensed. We do not have 100 percent coverage so, to be on the safe side, we have estimated that 2 or 3 percent of the retailers presently are subject to the Perishable Agricultural Commodities Act. It is clear, therefore, that even if some of the licensed retailers should be excluded from the act, it would affect only a fractional percentage of the retail stores in the country.

No one has proposed that all retailers, regardless of how small, should be covered by the Perishable Agricultural Commodities Act. On the other hand, no one has proposed that all retailers, regardless of how large, should be excluded. The question then involves the matter of where the line should be drawn.

As a general principle, retailers should be licensed if their operations are of enough significance to affect the general application of the Perishable Agricultural Commodities Act code of fair trading practices. This certainly should include the nearly 300 large chains who do 39 percent of the retail food business in the country. This certainly should exclude the approximately 170,000 small single-unit firms (65 percent of the total stores) who do only 8 percent of the total retail food business.

This leaves 35 percent of the retail firms, comprised of small chains and single-store supermarkets, doing 53 percent of the total food business on which the question of where to draw the line rests.

Unjustified rejections, failure to pay, or other unfair trading practices by large retailers have a major economic impact on growers, shippers, and all other factors in the industry. This is true whether the retailer buys directly from the grower or buys from a wholesaler. It has a direct effect on the price which the shipper pays to the grower. Risk of losses by wholesalers due to unfair rejection or failure to pay by the retailer is reflected in the price paid to growers. Business failures by wholesalers inevitably result in monetary losses to their creditors—the growers and shippers. Failure to pay within a reasonable time is presently a curse of the fruit and vegetable industry—many firms want to do business on someone else's money without having to pay interest. Apparently, this starts at the top in many cases so that several months may elapse before the grower gets his money

after it is handed from the retailer to the wholesaler, then to the shipper, and finally to the grower.

In our judgment, the question clearly is not one of who the retailer buys from in determining whether he should be subject to the act. Instead, it is the question of determining whether his volume of business is sufficient to make him an important link in carrying out the fair trading practices of the act.

2. WHAT LEGAL CRITERIA SHOULD BE ESTABLISHED TO DESIGNATE THOSE RETAILERS REQUIRED TO OBTAIN A PERISHABLE AGRICULTURAL COMMODITIES ACT LICENSE?

After receiving the committee's request for this report, a questionnaire was mailed to each licensee in order to obtain certain information which was not otherwise available. Replies were received from about 45 percent of the licensees with many of them failing to answer the questionnaire in full. (See exhibit A for questionnaire.)

One of the questions asked retailers was whether it would be preferable to use dollar value of purchases instead of tonnage in determining whether retailers are subject to licensing. The views by retailers expressed on this question were as follows:

Retailer preference for dollars versus tonnage as basis for licensing

[In percent]

	Retail store firms	Retail truckers	Total
Prefer dollar value.....	77.8	67.1	76.9
Prefer tonnage.....	9.9	14.5	10.3
No preference.....	12.3	18.4	12.8
Total.....	100.0	100.0	100.0

We concur with the view of the 77 percent that dollar value to determine which retailers are subject to the PACA would be preferable to the present tonnage formula. Most retailers keep their records of purchases and sales of fresh and frozen fruits and vegetables in terms of dollars—not in tonnage. Retailers probably do not know the net weight of the bulk containers of many products—crates, boxes, and sacks—which they then break down and sell by count or piece.

The survey also revealed that the present formula of "purchases of 1 ton or more of fresh or frozen fruits and vegetables in excess of 20 times per year" results in some licensing quirks in relation to the total annual value of purchases by these firms. Evidently, variations in the pattern of purchases (e.g., deliveries once per week versus three times per week) have caused some retailers to be licensed whose total annual purchases were relatively small.

The percentage of retailers by size bracket who responded to the survey was as follows:

Annual purchases of fruits and vegetables by licensed retailers

Annual purchases of fruits and vegetables	Percent of firms	Percent of dollar value
0 to \$10,000.....	11	0.1
\$10,000 to \$25,000.....	13	.5
\$25,000 to \$50,000.....	18	1.6
\$50,000 to \$250,000.....	43	11.6
\$250,000 to \$1,000,000.....	10	36.4
Over \$1,000,000.....	5	49.8
Total.....	100	100.0

The retailers buying less than \$50,000 per year represented 42 percent of the licensed firms by number but only 2.2 percent of the total dollar value of purchases. Using average wholesale values per ton for fruits and vegetables, apparently many retailers in the under \$10,000 bracket are buying only 30 to 40 tons of fresh and frozen fruits and vegetables per year. This would mean that they buy less than a ton per week on the average. We believe that such firms purchasing only 0.1 percent of the supplies could be exempted without significantly

impairing the general effectiveness of the Perishable Agricultural Commodities Act. On the other hand, the firms in the \$50,000 to \$250,000 bracket purchased 11.6 percent of the total. A retailer at the \$50,000 value level is buying about 300 tons of fruits and vegetables per year or about 1 ton for each business day. We believe that the \$50,000 and higher category could not be exempted without adversely affecting the growers and wholesalers.

Therefore, we think that the questions and differences of opinion concerning the most satisfactory and acceptable dollar value will fall somewhere in the range between \$10,000 and \$50,000.

We recommend the legal criteria for determining whether or not a retailer is subject to licensing under the act be set at a minimum of \$50,000 of purchases per year of commodities covered by the act. This should effectively remove any "small retailer" about which there should be any valid question of his coverage. For example, approximately 35 percent of the other types of licensees do less than \$50,000 per year in volume of business and many of them fall in the less than \$10,000 category. (Information on size distribution of licensees by type of business is given in exhibit C.) Our recommended minimum of \$50,000 may be going to far which could result in a significant impairment in the general application of the Perishable Agricultural Commodities Act code of fair trading practices. There is no conclusive method of determining this except by actual experience. If a significant impairment should result, the act can be further amended at some future date to correct this criteria.

Based on information obtained from our survey, the effect of adopting the \$50,000 criteria on the number of licensed firms is given below:

Comparison of licensed retailers by size category

Retailers ¹	Estimated number	Percentage of total
Now licensed volume of annual purchases under \$50,000.....	1,482	0.63
Now licensed volume of annual purchases \$50,000 and over.....	2,046	.87
Total number licensed.....	3,528	1.50
Total number retail firms.....	234,000	100.00

¹ Including retail truckers.

In concluding our recommendation on the legal criteria for licensing retailers, we would like to comment very briefly on the proposal which has been made that all retailers who purchase 90 percent or more of their commodities from licensed wholesale suppliers should be exempted from the act. Even the largest retail food chain organization in the country with total sales last year in excess of \$5 billion would be exempted under this proposal. All large retailers purchase the great bulk of their produce from licensed wholesalers, located either at shipping point or in the terminal market.

The only retailers who would not be exempted under this proposal are those few retailers who buy over 10 percent of their commodities directly from growers or from other unlicensed suppliers.

3. SHOULD BROKERS DEALING IN FROZEN FOODS BE REQUIRED TO BE LICENSED UNDER THE ACT WHEN BROKERS DEALING IN CANNED FOODS ARE NOT REQUIRED TO BE LICENSED?

The specific proposal made by the National Food Brokers Association is that brokers who act only as sales agents for processors of frozen fruits and vegetables should be exempted from the act. We believe that all brokers, whether representing sellers or buyers or whether the commodity is fresh or frozen, should be subject to the act as long as the commodity itself is covered by the act. If canned foods ever were added to the act, it would then be essential to include the canned food brokers. Department testimony on these bills set forth the reasons why we believe that inclusion of brokers is essential. The act itself cites five separate provisions covering unfair practices in which brokers may not engage. Exclusion of brokers from the licensing would remove all effective means for enforcing these provisions of the act applicable to brokers.

4. SHOULD THERE BE PROVISION FOR SUPPLEMENTAL LICENSE FEES FOR FIRMS WITH MORE THAN ONE OPERATING UNIT?

There was an extremely wide range in the volume per store reported by licensees who responded to the survey. Two single-store retailers reported yearly purchases of fruits and vegetables in excess of \$1 million per store. On the other hand, a number of firms each operating six or more stores reported total purchases under \$250,000 annually per firm. The per store purchases of these firms averaged less than \$7,500. If a supplemental fee for each operating unit were adopted, these multiple-store firms might be required to pay a license fee which was substantially higher than the larger single-store firms even though their aggregate purchases were very materially less.

If the same approach were followed for other types of licensees, the probable inequities are even more apparent. For example, some of the smallest wholesalers that reported are operating several establishments, whereas some of the very largest have only one.

We recommend against the adoption of a supplemental license fee based on the number of operating units. We do not believe that it provides a fair and equitable basis for licensing. Actually, neither the costs of administering the act nor the benefits received from the act bear any relationship to the number of operating units comprising a firm. Furthermore, if the legal criteria for licensing retailers is changed to \$50,000 or more of purchases per year, it will mean that the smallest retailer will have a gross profit on fresh and frozen fruits and vegetables alone of about \$15,000 per year. This should alleviate some of the concern over the economic impact of this annual license fee on retailers and the relative ability of the different-sized firms to pay the fee.

5. SHOULD THERE BE VARIABLE FEES BASED ON THE VOLUME OF BUSINESS CONDUCTED BY EACH LICENSEE?

Approximately 70 percent of the firms responding to the survey reported an annual volume of business under the act of less than \$250,000. Ten percent reported a volume in excess of \$1 million. It is obvious, therefore, that a major part of the income needed to administer the act must come from the firms with less than \$250,000 of business under the act. Any substantial reduction in license fees paid by these firms could be accomplished only by increasing fees paid by others to levels which we believe would be extremely high. The alternative would be a schedule with relatively minor differences in fees from low to high volume firms. Further, it is our opinion that the benefits to firms under the act are not necessarily related to volume of business.

Fifty-three percent of the firms replying to the survey favored variable license fees with 38 percent favoring uniform fees. Nine percent expressed no preference. There were wide variations of viewpoint on this question depending upon size and type of business. Most of the small firms were in favor of a variable fee. Most of the medium size and large firms preferred a uniform fee. Shippers, receiving market commission merchants, growers agents, and freezers indicated a significant preference for uniform fees. On the other hand, retailers, brokers, truckers, and manufacturers indicated a significant preference for variable fees. There was little difference in the views of market receivers and canners on this question. (Detailed information on fee preferences by size and type of business is included in exhibit D.)

A variable license fee system based on volume of business would be very difficult and expensive to administer. A method would be needed to spotcheck records of licensees to verify the correctness of the license fee paid. We conservatively estimate that the additional cost of administering such a variable fee system would amount to approximately \$115,000 annually. This in itself would add nearly \$5 per year to the average fee for each licensee. In addition, licensees would have extra bookkeeping and reporting costs. Annual renewal of license is now a simple matter. This would not be true for either the licensee or the Department if the size of the fee had to be based on volume of business conducted during the past year.

In view of the industry response by size and type of business, the Department concludes that there is no strong overall industry preference for a variable fee. We recommend against adoption of a variable fee system based on volume of business on the further grounds of the additional costs and the difficulties it would create, both for licensees and for the Department.

6. SUMMARY OF RECOMMENDATIONS

The Department recommends:

(a) That dollar value of purchases rather than tonnage purchased be used in determining which retailers are subject to license and further that all retailers be exempt from the license requirements whose dollar purchases of commodities covered by the act are \$50,000 or less annually. This would require amending the present act by deleting subparagraph (6)(B) of the first section and adding the following in lieu thereof: "(B) No person buying any such commodity solely for sale at retail shall be considered as a 'dealer' in respect to any such commodity until his purchases of such commodity in any consecutive 12-month period are in excess of \$50,000;"

(b) That all brokers negotiating purchases or sales of commodities covered by the act should continue to be subject to the act.

(c) That supplemental fees based on number of stores or units should not be imposed.

(d) That uniform license fees should be continued rather than adopting a fee schedule based on volume of business.

EXHIBIT A

U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE,
Washington, D.C., October 20, 1961.

PERISHABLE AGRICULTURAL COMMODITIES ACT SURVEY

To Perishable Agricultural Commodities Act Licensees:

Proposed amendments to the Perishable Agricultural Commodities Act were submitted to Congress in the 1961 session. One of the proposed amendments dealt with license fees which are the sole source of revenue to pay for the cost of administration of the act. In recent years, the current fee has not produced sufficient revenue to meet these expenses, and it has been necessary to draw upon the limited reserve funds built up in previous years. The bill, therefore, proposed to authorize an increase in the license fee to a maximum of \$50. However, the Department proposes to increase the fee to only approximately \$35 at this time to cover current administrative expenses. Representatives of the retailers and the frozen food brokers have objected to increasing the fee and questioned the equity of requiring payment of the same annual fee by each licensee, regardless of the size of the business, or the number of branches operated. The Secretary of Agriculture was requested by the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture to investigate the feasibility of using variable fees depending on the volume of business conducted, or the number of branches or stores operated. The Department does not oppose the principle of variable fees if the industry favors such a plan. However, we would not like to have a plan adopted that would be costly to administer. Of course, it should be recognized that if a variable fee plan is adopted licensees will be called upon to submit reports to the Department showing the volume of business conducted, or number of branches or stores operated. Also, the records of licensees would be subject to review by the Department to verify the accuracy of the reports.

Also, with respect to retailers, it was requested that a study be made to determine if the cost of fresh and frozen fruits and vegetables purchased, rather than the tonnage purchased, would be a more desirable and realistic method of determining whether retailers are subject to licensing.

The Department is soliciting your prompt cooperation in completing this study. Please answer the questions on the enclosed questionnaire and return it to the Department by November 10, 1961, in order that a report can be made to Congress. Use the self-addressed envelope which requires no stamp. Please review the instructions carefully before completing the questionnaire. If your records are incomplete, a good estimate is better than no reply. The information you provide will be held confidential and used only in combination with replies from other licensees.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division.

INSTRUCTIONS FOR ANSWERING QUESTIONS

1. Base your answers on business conducted during the most recent 12 months for which information is available. If you have been in business for less than 12 months, furnish anticipated amount of business that will be conducted during a 12-month period. Include only fruits and vegetables that originated in, or were shipped to, another State or foreign country. Do not include fruits and vegetables which you have grown.

2. Review all categories listed before answering the questions.

3. If business is conducted in more than one category, insert the amount of business conducted under each of the appropriate categories.

4. In reporting frozen fruits and vegetables, do not include those which have been dried or manufactured into articles of food of a different character such as juices, concentrates, french-fried potatoes, and so forth.

5. Firms buying fresh and frozen fruits and vegetables to supply their subsidiaries or service their cooperative members should report as market receivers.

6. Retail subsidiaries and members of service cooperatives holding separate licenses under this act should report the value of fresh and frozen fruits and vegetables received through their parent firms or purchasing organizations.

FORM FV-274
(10-12-61)UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
FRUIT AND VEGETABLE DIVISION
WASHINGTON 25 D. C.FORM APPROVED
BUDGET BUREAU NO. 40-61137

PERISHABLE AGRICULTURAL COMMODITIES ACT SURVEY

INSTRUCTIONS: Please read carefully the instructions in the covering letter before answering questions. If records for

supplying answers to Part 2 are not readily available, your best estimates will be satisfactory.

PART 1 - GENERAL (To be answered by ALL licensees.)

1 WHICH OF THE FOLLOWING METHODS OF DETERMINING PACA LICENSE FEE LIABILITY DO YOU PREFER?

☐ 1(A) PREFER UNIFORM PACA LICENSE FEE FOR ALL LICENSEES☐ 2(B) PREFER VARYING PACA LICENSE FEE BY SIZE OR TYPE OF BUSINESS.**PART 2 - TYPE OF BUSINESS CONDUCTED** (To be answered as applicable.)

(REPORT FOR 12-MONTH PERIOD - See instruction No. 1 in the covering letter.)

THIS SECTION TO BE COMPLETED BY SHIPPERS AND RECEIVERS
(Report SALES)

2 MARKET RECEIVERS (Including distributors and jobbers)

FRESH FRUITS AND VEGETABLES

FROZEN FRUITS AND VEGETABLES

02

\$

\$

3 SHIPPERS

03

4 TRUCKERS SELLING AT WHOLESALE

04

5 NUMBER OF BRANCHES OR UNITS OPERATED ON AN ANNUAL BASIS

6 MAXIMUM NUMBER OF BRANCHES OR UNITS OPERATED AT ANY ONE TIME ON A SEASONAL BASIS

THIS SECTION TO BE COMPLETED BY BROKERS AND SALES REPRESENTATIVES
(Report GROSS FEES and COMMISSIONS EARNED)

7 BROKERS (Including independent sales agents)

07

\$

\$

8 BUYING BROKERS

08

9 RECEIVING MARKET COMMISSION MERCHANTS

09

10 GROWERS' AGENTS (Including cooperatives)

10

11 NUMBER OF BRANCHES OPERATED ON AN ANNUAL BASIS

12 MAXIMUM NUMBER OF BRANCHES OPERATED AT ANY ONE TIME ON A SEASONAL BASIS

THIS SECTION TO BE COMPLETED BY PROCESSORS

13 CANNERS - PURCHASES OF FRESH FRUITS AND VEGETABLES

13

\$

14 FREEZERS - PURCHASES OF FRESH AND FROZEN FRUITS AND VEGETABLES

14

\$

15 FREEZERS - SALES OF FROZEN FRUITS AND VEGETABLES

15

16 MANUFACTURERS - PURCHASES OF FRESH AND FROZEN FRUITS AND VEGETABLES FOR USE IN THE PRODUCTS

16

\$

17 NUMBER OF PLANTS OPERATED

THIS SECTION TO BE COMPLETED BY RETAILERS
(Report PURCHASES)

18 RETAILERS OPERATING FROM ESTABLISHED PLACE OF BUSINESS

18

\$

\$

19 NUMBER OF STORES INCLUDED IN QUESTION 18

20 RETAILERS SELLING OFF TRUCKS

20

\$

\$

21 NUMBER OF TRUCKS INCLUDED IN QUESTION 20

22 WOULD IT BE PREFERABLE TO USE DOLLAR VALUE OF PURCHASES INSTEAD OF TONNAGE IN DETERMINING WHETHER RETAILERS ARE SUBJECT TO LICENSING?

☐ 1

YES

☐ 0

NO

NAME OF
FIRM

BY

ADDRESS
OF FIRM

TITLE

NOTE: Make comments on reverse.

EXHIBIT B

Licenses in effect, by State, number, and percentage of licensees participating in PACA survey

State	Licenses	Survey participants	Percentage of licensees participating	State	Licenses	Survey participants	Percentage of licensees participating
Alabama.....	504	158	31.3	Nebraska.....	170	82	48.2
Alaska.....	13	5	38.5	Nevada.....	31	11	35.5
Arizona.....	296	140	47.3	New Hampshire.....	61	19	31.1
Arkansas.....	356	145	40.7	New Jersey.....	725	288	39.7
California.....	2,331	1,128	48.4	New Mexico.....	123	45	36.6
Colorado.....	415	185	44.6	New York.....	2,198	1,005	45.7
Connecticut.....	272	122	44.9	North Carolina.....	598	252	42.1
Delaware.....	69	31	44.9	North Dakota.....	88	46	52.3
District of Columbia.....	97	40	41.2	Ohio.....	1,035	529	51.1
Florida.....	1,398	572	40.9	Oklahoma.....	332	109	32.8
Georgia.....	625	222	35.5	Oregon.....	266	135	50.8
Hawaii.....	92	44	47.8	Pennsylvania.....	1,343	679	50.6
Idaho.....	184	80	43.4	Rhode Island.....	92	38	41.3
Illinois.....	1,264	629	49.8	South Carolina.....	268	105	39.2
Indiana.....	688	279	40.6	South Dakota.....	34	17	50.0
Iowa.....	360	149	41.4	Tennessee.....	510	223	43.7
Kansas.....	291	124	42.6	Texas.....	1,564	639	40.9
Kentucky.....	393	147	37.4	Utah.....	119	48	40.3
Louisiana.....	501	162	32.3	Vermont.....	29	14	48.3
Maine.....	342	158	46.2	Virginia.....	503	223	44.3
Maryland.....	352	207	58.8	Washington.....	440	240	54.5
Massachusetts.....	752	390	51.9	West Virginia.....	248	110	44.4
Michigan.....	972	411	42.3	Wisconsin.....	407	204	50.1
Minnesota.....	367	216	58.9	Wyoming.....	42	17	40.5
Mississippi.....	259	93	35.9				
Missouri.....	676	301	44.5	Total.....	125,170	11,248	44.7
Montana.....	67	32	47.8				

¹ Total includes 6 licensees in Canada and 2 in Mexico.

EXHIBIT C

Distribution of volume of business in fruits and vegetables—Type of business

[In percentages]

Type of business	Under \$10,000	\$10,000 to \$24,999	\$25,000 to \$49,999	\$50,000 to \$249,999	\$250,000 to \$999,999	\$1,000,000 and over	Total
Market receivers.....	7.4	6.1	7.1	30.2	32.4	16.8	100.0
Shippers.....	4.2	6.3	7.1	32.0	33.2	17.2	100.0
Truckers (wholesale).....	13.9	13.2	20.3	44.1	7.6	.9	100.0
Brokers.....	45.6	19.6	14.7	16.5	3.0	.6	100.0
Buying brokers.....	37.9	24.7	15.3	16.6	5.5	0	100.0
Receiving market commission merchants.....	14.3	14.3	27.1	35.7	7.2	1.4	100.0
Growers agents.....	16.0	19.7	18.6	29.3	12.2	4.2	100.0
Canners.....	8.3	10.2	14.6	33.4	24.0	9.5	100.0
Freezers—Buy.....	7.7	7.7	15.3	30.8	21.2	17.3	100.0
Freezers—Sale.....	1.0	1.0	2.8	21.7	33.0	40.5	100.0
Manufacturers.....	16.4	14.9	15.5	35.5	12.9	4.8	100.0
Retailers—Establishments.....	11.3	12.6	18.3	43.0	10.3	4.5	100.0
Retailers—Trucking.....	34.0	25.7	20.7	19.0	.6	0	100.0
Total.....	13.7	11.1	13.0	33.3	19.5	9.4	100.0

EXHIBIT D

Tabulation of Perishable Agricultural Commodities Act survey results—Preference for uniform and variable fees, by volume of business and by type of business

Type of business	Under \$10,000	\$10,000 to \$24,999	\$25,000 to \$49,999	\$50,000 to \$99,999	\$100,000 to \$174,999	\$175,000 to \$249,999	\$250,000 to \$349,999	\$350,000 to \$499,999	\$500,000 to \$749,999	\$750,000 to \$999,999	\$1,000,000 and over	Total
Market receivers:												
Total reports number	213	177	206	295	340	237	252	267	257	161	484	2,889
Uniform	15.5	27.1	25.2	27.1	33.5	40.9	47.6	46.2	64.6	67.1	77.9	46.0
Variable	73.2	65.5	68.9	65.4	62.9	54.9	46.8	46.1	31.6	29.8	18.6	48.8
No vote	11.3	7.3	5.8	7.5	3.5	4.2	5.6	3.7	3.9	3.1	3.5	5.2
Shippers:												
Total reports	59	89	99	156	177	115	109	136	143	87	241	140
Uniform	23.7	23.6	36.3	38.5	49.7	57.4	65.1	65.1	62.9	75.9	83.4	56.7
Variable	67.8	73.0	59.6	55.1	46.9	41.7	30.3	31.7	30.8	20.7	13.3	39.1
No vote	8.5	3.4	4.0	6.4	3.4	0.9	4.6	3.2	6.3	3.4	3.4	4.1
Truckers (wholesale):												
Total reports	177	168	259	308	180	74	55	23	14	5	11	1,274
Uniform	19.8	24.4	20.8	26.9	27.8	41.9	38.2	47.8	57.1	40.0	72.7	27.0
Variable	74.0	67.9	74.1	69.8	68.3	51.4	60.0	43.5	35.7	40.0	27.3	68.0
No vote	6.2	7.7	5.0	3.2	3.9	6.8	1.8	8.7	7.1	20.0	0	5.0
Brokers:												
Total reports number	399	171	129	86	40	18	10	5	7	4	5	874
Uniform	14.5	32.2	48.8	52.3	55.0	55.6	40.0	40.0	28.6	75.0	40.0	30.4
Variable	73.4	59.1	47.2	38.4	37.5	44.4	40.0	40.0	28.6	25.0	40.0	59.7
No vote	12.0	8.8	3.9	9.3	7.5	—	20.0	20.0	42.8	—	20.0	9.8
Buying brokers:												
Total reports number	89	58	36	18	12	9	7	1	3	2	0	235
Uniform	27.0	55.2	55.6	72.2	25.0	55.6	42.9	100.0	66.7	100.0	0	44.7
Variable	70.8	36.2	41.7	27.8	75.0	33.3	42.9	—	33.3	—	0	51.1
No vote	2.2	8.6	2.8	—	—	11.1	14.2	—	—	—	0	4.2
Receiving market commission merchants:												
Total reports number	10	10	19	12	9	4	2	3	0	0	1	70
Uniform	50.0	50.0	57.9	58.3	77.8	50.0	100.0	100.0	—	—	100.0	61.4
Variable	40.0	50.0	42.1	41.7	11.1	50.0	—	—	—	—	0	35.7
No vote	10.0	—	—	—	11.1	—	—	—	—	—	0	2.9
Growers agents:												
Total reports number	30	37	35	26	19	10	7	3	7	6	8	188
Uniform	33.3	56.8	54.3	65.4	73.7	50.0	71.4	100.0	42.8	50.0	100.0	57.4
Variable	60.0	40.5	28.6	26.9	26.3	40.0	28.6	—	57.2	50.0	0	36.2
No vote	6.7	2.7	17.1	7.7	—	10.0	—	—	—	30.0	0	6.4
Caners:												
Total reports number	21	26	37	35	34	16	20	22	11	8	24	254
Uniform	19.0	26.9	21.6	34.3	41.2	43.8	70.0	63.6	54.5	87.5	66.0	42.9
Variable	81.0	61.5	67.6	51.4	47.1	37.5	30.0	31.8	36.4	12.5	29.2	48.4
No vote	—	11.5	10.8	14.3	11.8	18.8	—	4.5	9.1	—	4.2	8.7

Freezers—buy:										
Total reports number	4	4	8	5	5	6	4	1	2	4
Uniform	25.0	50.0	87.5	40.0	40.0	100.0	50.0	100.0	75.0	88.9
Variable	50.0	50.0	12.5	60.0	60.0	100.0	50.0	100.0	25.0	11.1
No vote	25.0									0
Freezers—sale:										
Total reports number	1	1	3	7	7	9	6	9	11	43
Uniform	100.0	100.0	100.0	14.3	14.3	44.4	66.7	44.4	63.6	83.7
Variable				85.7	57.1	44.4	33.3	55.5	39.4	7.0
No vote					28.6	11.1				9.3
Manufacturers:										
Total reports number	85	77	80	91	67	26	27	22	14	25
Uniform	8.2	22.1	32.5	36.3	61.2	46.2	51.9	68.2	50.0	84.0
Variable	80.0	72.7	60.0	56.0	32.8	53.8	44.4	27.3	28.6	12.0
No vote	11.8	5.2	7.5	7.7	6.0		3.7	4.5	21.4	4.0
Retailers—Establishments:										
Total reports number	216	241	350	434	255	134	67	64	36	87
Uniform	11.6	14.1	16.6	24.0	31.4	37.3	38.8	51.6	61.1	67.8
Variable	78.2	75.5	74.9	65.2	56.9	52.2	53.7	39.1	27.8	19.5
No vote	10.2	10.4	8.6	11.5	11.8	10.4	7.5	9.4	11.1	12.6
Retailers—Trucking:										
Total reports number	61	46	37	24	10	0	1	0	0	0
Uniform	9.8	8.7	13.5	20.8	20.0					0
No vote	8.2	2.2	8.1	16.7	20.0					0
Variable	82.0	89.1	78.4	62.5	60.0		100.0			0
Total:										
Total reports number	1,365	1,105	1,298	1,497	1,155	658	567	546	505	928
Uniform	16.3	26.0	27.1	30.7	37.9	43.9	50.4	55.5	62.0	78.6
Variable	74.1	66.5	66.3	61.5	55.9	50.6	44.4	39.9	31.9	16.6
No vote	9.6	7.5	6.6	7.8	6.1	5.5	5.1	4.6	6.1	4.8

NOTE.—Reports that did not include information on volume or type of business have not been included as follows: Miscellaneous—Total reports number, 1,293; Uniform, 258 percent; Variable, 43.5 percent; and No vote, 36.7 percent.

Mr. HEIMBURGER. Could I ask Mr. Rains of the United Fruits and Vegetables one question?

Mr. GRANT. Mr. Rains, committee counsel wants to ask you one more question.

Mr. HEIMBURGER. Mr. Rains, I would like you to expand a bit on a statement you made which wasn't quite clear to me. Did I understand you to say that if this principle of exempting from Perishable Agricultural Commodities Act licensing the retailers who purchase from wholesalers within the same State, then there is no reason why this same principle should not be applied to wholesalers who purchase from wholesalers or jobbers within the same State, is that the point you are making?

Mr. RAINS. Mr. Heimburger, I believe you are referring to that part of my testimony relating to local transactions.

Mr. HEIMBURGER. That is correct, yes.

Mr. RAINS. I stated that in my opinion the term "local transaction" in our industry was rather widely misunderstood. Now, considering a local transaction in wholesale quantities, I referred to a carlot distributor in a gateway city such as Chicago who owned a car of merchandise on wheels, en route, let us say, from California to Chicago, and at the time in Wyoming, and for reasons best known to himself he wanted to get rid of that car, either to make a profit or to reduce a loss. So he negotiated with a man in the same market, maybe in the adjoining office or the adjoining wholesale store. He gave him the manifest, that is, the grade, size, number of packages, and what have you, and probably the label. He gave all that to this prospective purchaser, and they negotiated a price. And the transaction was made. Well, in my opinion that would constitute a local transaction in the minds of many people, two people standing on a curb in a city. You would say that was a local transaction. Well, that sort of thing has to be covered. It is the backbone of the industry, and many transactions like that occur regularly. The other would be a salaried representative of a big buyer at a shipping point office negotiating for the purchase of a carlot or several carlots of merchandise to be shipped, let us say, to Chicago, or New York.

There we have the salaried representative of a principal, a buyer, talking to the other principal, the owner and shipper, negotiating a sale with merchandise maybe only being loaded, or maybe the merchandise is still in the field in the process of being harvested, but he buys on the basis of what the seller represents it to be there on the manifest, again, the size, grade, quality, what have you.

And the man walks out of the shipper's office and goes about his business. That would be considered by him, I suppose, as being a local transaction. But many such transactions take place in this industry, and those must be covered.

Mr. HEIMBURGER. Thank you.

Mr. GRANT. Thank you very much.

The committee will stand adjourned.

(Whereupon, at 12:07 p.m., the subcommittee adjourned, subject to the call of the Chair.)

MARKETING OF PERISHABLE AGRICULTURAL COMMODITIES

U. S. DEPARTMENT OF AGRICULTURE
/ LAW LIBRARY
LEGISLATIVE REPORTING

HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON AGRICULTURE AND FORESTRY UNITED STATES SENATE EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1037

A BILL TO AMEND THE PROVISIONS OF THE PERISHABLE
AGRICULTURAL COMMODITIES ACT, 1930, RELATING TO PRAC-
TICES IN THE MARKETING OF PERISHABLE AGRICULTURAL
COMMODITIES

AUGUST 8, 1961

Printed for the use of the
Committee on Agriculture and Forestry



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1961

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CONTENTS

Statement of,	
Bison, Henry, Jr., general counsel, National Association of Retail Grocers of the United States-----	Page 24
Datt, John C., assistant to the director, Washington office, American Farm Bureau Federation-----	16
Grange, George R., Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture---	5
Mercker, A. E., executive director, National Potato Council-----	38
Naden, Kenneth D., secretary, National Council of Farmer Cooperatives-----	17
Rains, Alan T., executive vice president, United Fresh Fruit & Vegetable Association-----	20
Rogers, Watson, president, National Food Brokers Association-----	33
Miscellaneous documents:	
S. 1037, 87th Congress-----	1
Report from the Department of Agriculture-----	3
Letter to Senator Aiken from Carl Smith, secretary, Vermont Retail Grocers' Association, Rutland, Vt.-----	5
Telegram to Alan T. Rains from Joffre C. David, secretary-treasurer, Florida Fruit & Vegetable Association-----	20
Letter to Alan T. Rains from Frank W. Castiglione, executive vice president, Western Growers Association-----	20
Statements filed by:	
Lawrence S. Martin, executive vice president, National Association of Frozen Food Packers-----	38
Paul L. Courtney, executive vice president, National Association of Wholesalers-----	39
Harold O. Smith, Jr., executive vice president, United States Wholesale Grocers' Association-----	40
Letter to Senator Hart from Ted Sahakian, Robert Bodemer Co., Detroit, Mich-----	40
Letter to Senator Bridges from James L. Mahony, executive director-treasurer, New Hampshire Retail Grocers Association, Manchester, N.H.-----	41

MARKETING OF PERISHABLE AGRICULTURAL COMMODITIES

TUESDAY, AUGUST 8, 1961

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL PRODUCTION,
MARKETING, AND STABILIZATION OF PRICES OF THE
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in room 324, Old Senate Office Building, Hon. Herman E. Talmadge, presiding.

Present: Senators Holland and Talmadge.

Senator TALMADGE (presiding). The committee will come to order.

There will be inserted at this point in the record a copy of the bill, S. 1037, a copy of the report from the Department of Agriculture reporting favorably on this legislation, and a letter addressed to Senator Aiken by the Vermont Retail Grocers Association, Inc., from Rutland, Vt.

(The documents referred to are as follows:)

[S. 1037, 87th Cong., 1st sess.]

A BILL To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), is amended by adding at the end thereof the following new paragraphs:

“(9) The term ‘responsibly connected’ means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

“(10) The terms ‘employ’ and ‘employment’ mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.”

SEC. 2. The third sentence of section 3(b) of such Act (7 U.S.C. 499c(b)) is amended to read as follows: “Upon the filing of the application, and annually thereafter, the applicant shall pay such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491–497), but in no event shall such fee exceed \$50. Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the ‘Perishable Agricultural Commodities Act Fund’, which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above: *Provided*, That financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually. The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase.”

SEC. 3. Section 3 of such Act (7 U.S.C. 499e) is further amended by adding at the end thereof the following new subsection:

"(c) A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant."

SEC. 4. Section 4(a) of such Act (7 U.S.C. 499d(a)) is amended by inserting before the period at the end thereof ": And provided further, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt".

SEC. 5. Section 4(b) of such Act (7 U.S.C. 499d(b)) is amended to read as follows:

"(b) The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is a person who, or is or was responsibly connected with a person who—

"(A) has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;

"(B) within two years prior to the date of application has been found after notice and hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;

"(C) within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491-497), relating to the prevention of destruction and dumping of farm produce; or

"(D) has failed, except in the case of bankruptcy and subject to his right to appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application."

SEC. 6. Section 4(c) of such Act (7 U.S.C. 499d(c)) is amended to read as follows:

"(c) Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided."

SEC. 7. Subsections (c) and (d) of section 6 of such Act (7 U.S.C. 499f) are amended by striking out "\$500" each place it appears and inserting in lieu thereof "\$1,500".

SEC. 8. Section 7(c) of such Act (7 U.S.C. 499g(c)) is amended by striking the second sentence thereof and substituting therefor the following: "Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat

the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States."

SEC. 8. Section 7(c) of such Act (7 U.S.C. 499g(c)) is amended by striking the the proviso at the end of the section and substituting therefor the following: "Provided, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied."

SEC. 10. Section 8(b) of such Act (7 U.S.C. 499h(b)) is amended to read as follows:

"(b) Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

"(1) whose license has been revoked or is currently suspended by order of the Secretary;

"(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

"(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section."

SEC. 11. The Act of June 10, 1933 (48 Stat. 123; 7 U.S.C. 581-589), popularly known as the Export Apple and Pear Act, is amended by adding at the end thereof a new section as follows:

"SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act."

DEPARTMENT OF AGRICULTURE.

Washington, D.C., April 27, 1961.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR SENATOR ELLENDER: This is in reply to your letter of February 24, 1961, requesting a report on S. 1037, a bill to amend the provisions of the Perishable Agricultural Commodities Act of 1930, relating to practices in the marketing of perishable agricultural commodities.

The Department recommends passage of the bill.

The major purposes of the bill are to (1) improve and clarify the provisions relating to relicensing or employment of persons who have violated the act or have been affiliated with such persons, (2) provide that an oral hearing need not be held when the amount claimed as damages in a reparation complaint does not exceed the sum of \$1,500, (3) provide authority for the Secretary to increase the annual license fee to a maximum of \$50 if necessary to meet the expenses for administering this act and the so-called Produce Agency Act, and (4) provide that PACA license fees will not be used to finance the cost of administering the Export Apple and Pear Act and authorize appropriations for this purpose.

The bill revises provisions relating to relicensing or employing a person whose license has been suspended or revoked or who has otherwise violated the act as well as persons affiliated with such persons. These provisions as now written are ambiguous and inconsistent. For example, the minimum license debarment period following violation of the act presently ranges from 1 year to forever, although the nature of the different offenses does not justify this great disparity. Since the act is not a criminal statute, the only enforcement vehicle is the economic sanction of controlling a person's right to do business for himself or to be employed by another licensee. Most persons engaged in the industry are limited by training and experience to the fruit and vegetable business in seeking their most gainful livelihood. Consequently, frequent attempts are made to circumvent the law following revocation or suspension of a license. Effective enforcement of the act, therefore, rests on having comprehensive, clear, and equitable provisions relating to relicensing and employment which fully cover the situations encountered in this area in the fruit and vegetable industry.

The PAC Act presently provides that, in reparation proceedings, an opportunity for an oral hearing must be afforded at the respondent's place of business whenever the damages claimed exceed the sum of \$500. Otherwise a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied by depositions or verified statements of facts. The bill increases this sum to \$1,500. The sum of \$500 represented about the average value of a carload of fresh fruits and vegetables in 1930 when the act was passed. This average value today is nearer \$2,000. Handling of formal complaints can be expedited if the shortened procedure is authorized for these small sums involving not more than \$1,500 which no longer justify the time and expense incurred by the parties involved. The bill does not preclude the Secretary from granting an oral hearing where a complaint involves a sum less than \$1,500 whenever he concludes that a hearing is desirable in order to develop the evidence satisfactorily.

The bill deletes reference to the Export Apple and Pear Act approved June 10, 1933 (7 U.S.C. 581-589), with regard to the use of PACA license fees for administrative expenses. The Export Apple and Pear Act establishes minimum standards for export and has no connection with the PAC Act. The PACA special fund in which license fees are deposited should not be used for carrying out nonrelated activities. Such a change would entail financing the administrative costs of the Export Apple and Pear Act approximating \$25,000 per year from funds appropriated under the "Marketing services" appropriation. This change in financing would not require a budget increase. These costs would be those related to the development, promulgation, and enforcement of the required export standards.

Administration of the PAC Act, except for the cost of legal services and partial coverage of retirement costs from appropriated funds, is financed from the license fees which are now fixed by the statute at a maximum of \$25 per year. PACA administrative expenses have exceeded collections for the past 2 years necessitating withdrawals from the limited reserve fund. Under current operating costs, it would be impossible to provide effective and timely service to the industry at the present rate of assessment. An increase in the license fees, therefore, is urgently needed.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

VERMONT RETAIL GROCERS ASSOCIATION, INC.,
Rutland, Vt., August 3, 1961.

Senator GEORGE D. AIKEN,
Senate Office Building, Washington, D.C.

DEAR SENATOR AIKEN: Referring to your letter of July 31 and Agriculture Committee hearing on S. 1037:

As far as I can determine there are 15 independent food retailers in Vermont who purchase sufficient fresh produce and/or frozen foods to be subject to the Perishable Agricultural Commodities Act. Some 80 percent of these people buy through wholesalers.

Because most of the affected retailers in our State purchase most if not all of their requirements in fresh produce from licensed wholesale distributors, we strongly urge you to consider favorably the amendment that will be proposed by the National Association of Retail Grocers to S. 1037 for the purpose of exempting food retailers from the act who purchase 90 percent or more of their perishable agricultural commodities from licensed wholesale suppliers.

In any event our association is definitely opposed to the proposed increase in the annual license fee from \$25 to \$50.

Trusting you will give this your earnest consideration at the hearing, I am
 Very truly yours,

CARL SMITH, *Secretary.*

Senator TALMADGE. The first witness is Mr. George Grange, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture.

Is Mr. Grange here?

Will you please come around and be seated, Mr. Grange. Mr. Grange, you may proceed in any manner you see fit to give your testimony on this bill.

**STATEMENT OF GEORGE R. GRANGE, DEPUTY DIRECTOR, FRUIT
 AND VEGETABLE DIVISION, AGRICULTURAL MARKETING SERV-
 ICE, U.S. DEPARTMENT OF AGRICULTURE**

Mr. GRANGE. I have a prepared statement that is only about five pages.

Senator TALMADGE. You may read it, scan it, or highlight it, insert it in the record, or testify verbally, as you see fit, Mr. Grange.

Mr. GRANGE. There are many important elements covered by this proposed amendment, and in preparing this statement we have briefed and highlighted these points as well as we possibly could.

So, actually, to cover all of the primary points as we see it, I guess the simplest and easiest way would be for me to run quickly through the report that we have.

Senator TALMADGE. If that suits your please, you may proceed.

Mr. GRANGE. This bill would amend the Perishable Agricultural Commodities Act of 1930. The PAC Act establishes a code of fair trading practices governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. To make this code effective, the act provides that (1) each commission merchant, dealer, and broker subject to the act obtains a license—

Senator TALMADGE. May I interrupt at that point. Is everyone who does business in interstate commerce in perishable farm commodities included under the act?

Mr. GRANGE. Everyone with certain exceptions. A grower, for example, who is marketing only his own production is not subject to license.

A canner or a processor, who is buying the raw product only within the State where he is located, is not subject to license. There is a special exemption for retailers which, in effect, excludes the great majority of all of the independent retailers, Senator.

Other than that, all commission merchants, dealers, and brokers, as defined by the act, who deal in interstate commerce, are required to license.

Senator TALMADGE. Frozen foods as well as fresh vegetables?

Mr. GRANGE. Frozen as well as fresh fruits and vegetables plus cherries in brine which was added back in the early 1930's as an additional commodity.

Senator TALMADGE. What is the penalty if they do business without a license?

Mr. GRANGE. The penalty is \$25 a day for each day they conduct business without a license, plus \$500 for each offense. We very rarely have to invoke the penalty provisions.

Senator TALMADGE. Proceed.

Mr. GRANGE (continuing). (2) False accounting, failure to make full payment promptly, unjustified rejections or failure to deliver, misbranding and other unfair practices are violations of the act; (3) each licensee shall keep complete and correct accounts and records on all transactions; and (4) the Secretary may investigate complaints, issue reparation orders, and refuse, suspend, or revoke licenses. Each licensee must pay an annual license fee. The fees are deposited in a special fund from which the cost of administering the act, other than legal services is paid.

The fruit and vegetable industry has undergone significant changes in both its market structure and distribution practices since 1930, when the law was first passed. The act has previously been amended several times to keep its provisions in alignment with existing industry needs. The purpose of this bill is to effect certain improvements in the act in recognition of existing practices and problems.

There are two main phases of activity in administering the act. The first provides that any person may complain to the Secretary concerning any violation of the fair trading principles and, if the facts warrant, the Secretary shall then call upon the person complained against to satisfy or answer the complaint. The act further provides that the Secretary shall investigate all reasonable complaints. If the Secretary concludes from the evidence submitted by the parties that a violation has occurred, he shall determine the amount of damages which were sustained and he shall then issue an order requiring the offender to pay such damages to the injured party by a specified date. The offender's license is automatically suspended unless he pays the amount of the award or appeals the Secretary's decision to a district court of the United States, as provided in the act.

The second main phase of activity is authority for the Secretary to suspend or revoke licenses as a disciplinary measure. The act provides that the Secretary may suspend licenses for not more than 90 days for any violation and may revoke licenses for repeated or flagrant violations.

The following information presents briefly the scope of activities under the act. There are approximately 25,000 licenses in effect.

Approximately 2,500 complaints are received annually and amicable settlements average in excess of \$1 million annually. Last fis-

cal year 368 formal orders were issued covering reparation awards totaling approximately \$425,000. In addition, our field offices receive in the neighborhood of 8,000 inquiries annually which are not listed as complaints but contribute to the settlement of a large number of disputes between the parties involved.

This, for example, would be when somebody had a load of water-melons sitting on track in a certain city and there was a dispute or controversy between the buyer and the seller, and one or both of them would call our nearest office and outline the situation to us and ask for our advice as to what their rights or responsibilities were, and how they should proceed in order to effect some fair and equitable settlement.

Most of our cases are settled on that basis without having to resort to the formal procedure that is provided by the statute.

Senator TALMADGE. Of the 2,500 complaints that the Department had last year, how many licenses were revoked?

Mr. GRANGE. We revoked seven licenses last year. These are disciplinary measures that go beyond the failure to pay a reparation award, and we have only a relatively few licensees whose actions are flagrant enough to warrant taking revocation action.

As stated in Secretary Freeman's report on S. 1037, one of the main purposes of this bill is to establish a clear-cut basis for licensing or employing a person whose license has been suspended or revoked or who has otherwise violated the act. In order to accomplish this, the bill rewrites entirely the sections concerning licensing and employment of such persons. The more important revisions are:

(1) Clarify the language of the act to indicate that a person whose license had lapsed or who had failed or refused to obtain a license at the time the violation occurred or at the time the Department's order was issued is in the same category as one who had a valid license.

(2) Clarify the language of the act to indicate that self-employment (that is, owner of a firm) is under the same limitations as are imposed on other persons employed in the business.

(3) Change the definition of employment by deleting the term "responsible position" and make the limitations applicable to any position.

(4) Establish realistic and equitable debarment periods and bonding requirements for relicensing or employment of a person against whom there is an outstanding reparation award or who has otherwise violated the provisions of the act.

(5) Change the length of time that a surety bond would have to be maintained following the time of relicensing or employment from the present 2-year period to 4 years.

These proposed changes in the act reflect the view that, except in extremely aggravated cases, a person should not be denied a license indefinitely either under the mandatory provisions of section 4(b) or by exercising the option of questioning fitness for license under section 4(d). In general, if he posts a satisfactory surety bond, a person would be relicensed after 2 years following revocation or failure to satisfy a reparation order. If his employer posts a satisfactory surety bond, such a person would be eligible for employment by another licensee after 1 year following revocation or immediately

following failure to pay a reparation order. The bonding requirement would bar persons from being relicensed for 3 years who, due to poor financial status, were not able to obtain a surety bond. We believe that it is reasonable to require some measure of assurance that such persons will carry out their future obligations better than they had in the past and, if they cannot obtain a satisfactory bond, they should not be licensed. Persons who could not obtain a bond would have to wait at least 3 years following the effective date of the Secretary's order before they would be eligible to be relicensed and would have to wait at least 2 years before they would be eligible to be employed by another licensee.

To elaborate just briefly on these licensing provisions which make up the bulk of the proposed amendment of S. 1037, there are now, as stated in the Secretary's report, a number of inconsistencies and inequities, in our judgment, insofar as the licensing and reemployment provisions are concerned. As an example, under a certain set of circumstances, if a licensee failed to pay a reparation order that was issued against him, we are barred by the provisions of the present statute from ever relicensing him as long as he continues to fail to pay; whereas in other cases he could fail to pay and we would be obligated to relicense him within 2 years. If he fails to pay a reparation order under the present law, he cannot be relicensed for a minimum period of 2 years unless he files an appeal in court and the Secretary's order is reversed by the court or he is discharged a bankrupt; whereas, if we take action against a person because of flagrant and repeated violations, one of the seven persons who had their licenses revoked last year that I referred to, then he is eligible to be relicensed after a period of only 1 year.

(Senator Holland entered the hearing room and Senator Talmadge relinquished the chair to him.)

Mr. GRANGE. Good morning, Senator. I was just completing my statement concerning the licensing and employment provisions of the act, Senator Holland, and I was summarizing it by saying that there are many inconsistencies and inequities, in our judgment, in the current licensing and employment provisions.

The purpose of these amendments, as you know, is to not only clarify those provisions, but also to put them on a more reasonable and realistic basis.

Of course, the matter of reemployment and relicensing is with us every day in administering the act, because most of the licensees are fitted by background, training, and experience to continue operation in the fresh fruit and frozen fruit and vegetable business if they are to seek their most gainful employment.

Senator TALMADGE. Let me ask one question while you are on that point.

Senator HOLLAND (presiding). Senator Talmadge?

Senator TALMADGE. On page 2 of your statement, paragraph 3, am I to understand from that if John Brown worked in any position, maybe the refrigeration room of one of these dealers, and his boss had some difficulty with this act, that at no future date could he ever obtain a license?

Mr. GRANGE. No, sir.

Senator TALMADGE. What does that mean specifically?

Mr. GRANGE. The act now provides that a person who has had his license revoked, for example, cannot be employed in a "responsible position" with another licensee for a minimum period of 1 year, and after 1 year the Secretary may approve such employment if the employer posts a satisfactory surety bond.

The difficulty that we have run into, Senator, in applying this provision of the statute is that, if the employer and employee wished to hide their working relationship, we have found that it is virtually impossible to get acceptable evidence that the employee is, in fact, operating in a responsible position.

I will give you an illustration. It is a current one that we have right with us today.

A man had his license suspended for failure to pay a reparation order, so he went out of business because he did not have an effective license.

His wife, who was a secretary in a business firm in town, applied for a license. We granted her a license because we had no grounds for refusing his wife the license. She hired her husband. We questioned her as to whether or not he was in a responsible position, and we had an investigator look into it.

She maintained that he was driving the truck and he was not in a responsible position.

We knew that she had had no previous contact with the produce business. It stretched our imagination quite a bit to try to believe that her husband was not occupying a responsible position. So when she left there a few months ago to take her old job back as secretary, we said:

"Well, enough is enough. We think that this is now 'responsible,' " and we filed a complaint requiring her to post a surety bond or to discharge her husband from the position. We are now in the process of getting the thing settled.

I think, incidentally, the outcome of this particular one is going to be that he will pay off the two reparation orders that had previously been issued against him rather than post the bond. That is just an example of what we get into.

Senator TALMADGE. That provision, then, does not mean that a bona fide employee of an employer who had his license revoked could at no time in the future obtain a license for himself?

Mr. GRANGE. It would have no effect upon the bona fide employee. It affects only the officers, the directors, the owner, or the partner, if it is a partnership.

Senator TALMADGE. Managerial, in other words?

Mr. GRANGE. Or someone who owns 10 percent or more of the stock. Those are the only classifications that would be affected by this provision.

Somebody who is working as an office manager or in any other capacity as strictly an employee is not covered by the terms of this provision.

Senator TALMADGE. Thank you.

Mr. GRANGE. The bill provides that an oral hearing in reparation proceedings need not be afforded unless the damages claimed exceed the sum of \$1,500. We believe that this increase from \$500 to \$1,500 is reasonable and realistic. Last year about 50 percent of the cases

on which oral hearings were held involved sums of less than \$1,500. Handling of formal complaints would be expedited significantly if the shortened procedure, under which written submissions of evidence are made, was authorized for these smaller cases and would result in substantial savings in costs of hearings to the parties and to the Government.

This \$500 figure has not been changed since the act was first enacted in 1930. At that time it so happens that a carload of produce on the average was probably worth about \$500.

Now that dollar values have changed so significantly, the cost of providing witnesses and conducting an oral hearing at the place of business of the respondent has become quite a burden on many people involving sums of only \$600, \$800, or \$900, and we and the great majority, to my knowledge, of the people in the industry are heartily in favor of increasing this minimum amount to \$1,500 from the existing \$500.

The bill provides that PACA funds would no longer be used to pay for the costs of administering the Export Apple and Pear Act. Since there is no connection between these two acts, we do not believe that PACA licensees should be required to finance the administration of the Export Apple and Pear Act from their annual fees. We, therefore, agree with the proposal that appropriated funds should be made available to cover the cost of administering this latter act. As stated in the Secretary's report, this change in financing would not require a budget increase.

The bill clarifies the provision which requires that a bond in double the amount of the award to be filed by the appellant in appealing a reparation order to court. It also specifies the type of bond which would be acceptable. The bill corrects a deficiency in the act relating to automatic suspension of a license following an appeal if the district court sustains the reparation order. The act now provides that a license shall be automatically suspended after 10 days from the date of judgment on the appeal unless prior thereto the judgment of the court has been satisfied, and makes no provision for withholding the suspension if the judgment of the district court is appealed to the court of appeals. The bill takes care of this point by providing that the license will not be suspended while a stay of the judgment is in effect.

The bill provides authority for the Secretary to increase the annual license fee to a maximum of \$50, if necessary, to meet the expenses of administering this act and the Produce Agency Act. Under the current \$25 fee, PACA administrative expenses have exceeded collections for the past 2 years, necessitating withdrawals from the limited reserve fund which has been built up over a period of years. An increase in the license fees, therefore, is urgently needed. Otherwise, our enforcement operations will have to be sharply curtailed. Current costs would necessitate an increase in the fee of about \$10 per license. It is highly desirable, however, to set the maximum fee at \$50 in order to make adequate provision for further increases in operating costs which may occur in the future. We approve of the provision requiring the Secretary to give public notice and an opportunity for interested parties to file their views or objections prior to the effective date of any increase in the fee.

We understand that proposals will be made to provide broader exemptions for retailers and for frozen-food brokers under the act. We further understand that two major reasons are given in support of these proposals. The first reason is that exclusion of independent retailers and frozen-food brokers would not impair the effectiveness of the act. We strongly disagree with this view. The second reason is that the license fee is not equitable because a variable fee is not assessed depending on the relative size or volume of business of each licensed firm. We are not opposed to the principle of variable fees if the fruit and vegetable industry favors such an arrangement. We do not believe, however, that the question of a flat fee versus variable fees is justifiable grounds for excluding any important segments of the industry, such as retailers or brokers, from the provisions of the act.

Over 95 percent of all single unit retail stores are now exempted from the PAC Act. The remaining 2 or 3 percent, which are subject to license, are virtually all supermarkets whose purchases of fresh and frozen fruits and vegetables average over \$50,000 per year per store.

We have many other licensees in the business whose aggregate purchases are considerably less than that per annum.

Every segment of the fruit and vegetable industry—shippers, brokers, truckers, jobbers, wholesalers, and retailers—must observe the fair trading rules of the PAC Act if the industry is to function in an orderly manner. In their capacity as wholesale buyers, retailers are one of the most important links in the chain of distribution. Retail functions, as such, are not covered by the act, but retailers are operating in a manner similar to other dealers in making wholesale purchases of fruits and vegetables. It is as essential for retailers to live up to their contractual bargains as it is for their suppliers. Complaints under the act have been filed by retailers against suppliers and vice versa. No one part can be left out and still expect the whole to operate smoothly and efficiently.

Many of the complaints under the PAC Act involve disputes between two licensees located in the same city on commodities which have originated outside the State. The coverage of the act would be significantly restricted if it were amended to limit its jurisdiction to only those transactions involving direct shipments from one State to another State. There is no more justification for exempting a supermarket which happens to buy the majority of its produce from a local licensed wholesaler than there would be to exempt wholesalers, many of whom receive all of their produce from local carlot jobbers, who are also licensed.

Coverage of brokers is essential in order to obtain effective enforcement of the act. This is especially true in frozen fruits and vegetables because of the widespread use of brokers in this industry. Exemption of brokers would mean that no requirements could be established concerning the type of confirmations which they issue or the records they are required to maintain. The Department would not have access to the brokers' records which is essential in many cases in order to determine the facts in investigating individual complaints. If buyers and sellers of frozen fruits and vegetables are to be covered by the act, then it is essential that brokers also be covered.

There are about 450 frozen-food brokers out of a total of 25,000 firms holding PACA licenses. Most of these brokers specialize in frozen foods and negotiate contracts amounting to thousands of dollars.

There has been an increasing number of complaints under the act involving frozen foods and brokers have been the complaining party in a number of cases. Reparation orders have been issued by the Department in favor of brokers calling for the payment of brokerage fees, some of which have amounted to several thousand dollars. Also, compliance by the parties with the terms of their contract is of vital importance to a broker. It would appear, therefore, that frozen-food brokers are benefiting from the Perishable Agricultural Commodities Act.

The question of the possible inequity of having the same annual fee for each licensee regardless of his size or volume of business is not confined to retailers and brokers. It would apply equally well to shippers, wholesalers, truckers, commission merchants, and other types of licensees because all of them vary significantly in size.

We believe it is the common practice to assess a standard fee for each type of Federal, State, or local business license. Whether a flat fee or a variable fee based on volume of business is more equitable could be argued either way. We believe that a \$35 or even a \$50 annual fee, which amounts to 10 to 15 cents per day, is not unreasonable for any firm which is engaged in business subject to the act. Many members of the industry believe that the small operators receive the greatest amount of benefit and protection from the Perishable Agricultural Commodities Act because large firms are naturally in a stronger position when it comes to protecting themselves from unfair trading practices.

As stated earlier, we have no reason to object to the principle of variable or graduated fees if the industry desires to make such a change. Of course, we would not like to have a system adopted which would be difficult or costly to administer. Fees based on the quantity or dollar value of commodities handled each year would require additional reports from licensees. Quite aside from the administrative difficulties involved, it is problematical if the industry would welcome the necessity of having to furnish such information. The problem of inaccurate reports coupled with fluctuations in volume, prices, and profits for fruits and vegetables makes the practicability and equity of this approach highly doubtful.

Senator HOLLAND. One question there.

You mean that you doubt whether many elements in the industry would want to make these detailed reports because they do not want to disclose the facts as to the volume or the nature of certain produce they are dealing in?

Mr. GRANGE. I believe it would be a combination of both, Senator; the natural reluctance of not having to divulge any more information than necessary, and then, secondly, the work that would be involved.

If you went on dollar value, for example, you could say everybody has to file an income tax so that should be simple. They could use their income tax return.

But the majority of people in the business have interests and income other than perishable agricultural commodities, which would

have to be segregated in order to make the determination that we would have to make.

In many cases, it would be difficult to get a common denominator of volume. Many things we do not measure in pounds. We measure in cartons, crates, and boxes, as you know, Senator. The additional work that would be imposed, if we go on a volume basis, of having to keep the records in such a manner that we would be able to have a reasonable and a meaningful total volume figure would be another factor.

We have not discussed this subject with industry representatives as we have all the other provisions that are included in your bill.

So we are not in a position to reflect the views of the industry, and this is something that, as we see it, should rest largely with the licensees themselves who are paying for this program, as to what they consider to be the most desirable and satisfactory method for financing the program.

An alternative approach, which would provide a rough measure of size of operations, would be to assess a supplemental fee for each outlet, packing plant, office, or trade name operated by each licensee. Some of the largest firms have only a few outlets or operating units so this approach, although workable, would not fully accomplish the objective of relating fees to volume of business. But this could be done insofar as its administrative practicability.

We can count the number of outlets that each licensee has.

Unless there is widespread industry support for assessing supplemental fees, we recommend that S. 1037 be enacted without change. We believe that the provisions of this bill are highly desirable and urge that favorable action by Congress will be taken as soon as possible.

Now, I have attached, which I would like also to include as part of my statement, some specific examples of actual cases involving retailers and frozen food brokers.

The first one concerns retailers, showing that we have had during the last 2 years 133 complaints filed against retailers. And 119 of those were for failure to pay, and 14 were because of questionable rejection.

Let me run through these examples quickly because I think they point up better than generalized words can the reasons for my earlier statement that we are opposed to the view that retailers and frozen food brokers could be excluded from the act without impairing its effectiveness.

A supermarket in New Jersey bought a load of South Carolina watermelons from a wholesaler in New Jersey. The supermarket accepted the melons and did not object to their quality until the wholesaler asked for payment 2 weeks later. The supermarket then said the melons were poor and asked for a large allowance from the invoice price. The PACA found that the supermarket had no evidence to support this contention and obtained a check for \$575 in full payment for the load.

A supermarket in West Virginia bought a mixed load of potatoes and oranges for \$135.40 from a wholesaler in Baltimore on April 20. After failing to get a reply to numerous statements and letters, wholesaler filed a PACA complaint on October 23. Retailer remitted full payment of \$135.40 on October 28.

A supermarket in Pennsylvania bought a load of U.S. No. 1 Maine potatoes from a wholesaler in Harrisburg, Pa. Retailer rejected load claiming potatoes failed to meet grade on delivery. Truck returned to Harrisburg; wholesaler obtained Government inspection which showed potatoes were, in fact, U.S. No. 1 grade; wholesaler sold potatoes to another buyer for \$137.30 less than original invoice price; and filed PACA complaint for recovery of damages. Retailer remitted payment of \$137.30 after PACA investigation.

Supermarket in Pennsylvania bought a load of Florida watermelons at an agreed price of \$200 f.o.b. Supermarket told shipper that it was going to reject melons because 50 percent of them were damaged by scarring on arrival. Shipper complained to PACA. Investigation showed that scarring damage occurred in transit. Since this was an f.o.b. sale, the buyer assumed the risk of damage in transit rather than the shipper. Supermarket accepted melons; paid shipper full invoice price; and filed claim against the carrier.

I would just like to point out on these cases involving the retailers that they do not involve a retailer buying from a farmer. They involve a retailer buying from another licensed wholesaler. To say that a retailer does not have to be covered simply because he does 90 or 100 percent of his business with licensed wholesalers would mean that this kind of complaint could not be handled under the PAC Act.

And, another thing, a definition of "wholesaler" would also include shippers. We do not have any legal definition of "wholesaler" that I know of. Webster states it is anybody that deals in mass or in large volume. So all of your country shippers would fall into the wholesaler classification, I believe, so that if you were to exempt retailers who buy from licensed wholesalers, I guess there would be very, very few retailers left in the country that would remain under the act.

Senator HOLLAND. These cases that you have given are actual cases?

Mr. GRANGE. Yes, sir.

Senator HOLLAND. Which have arisen in the enforcement of the law?

Mr. GRANGE. Yes, sir.

Senator HOLLAND. But without the stating of the names?

Mr. GRANGE. Right.

Senator HOLLAND. And the results obtained are the actual results that you obtained in administering the act?

Mr. GRANGE. These are examples of actual cases, Senator. I confined them to those that were settled informally or amicably because, as I stated earlier, the great majority of our cases are settled on that basis rather than having to resort to the formal proceedings.

These are actual cases that we have had recently.

Senator HOLLAND. I should say that after the introduction of this bill at the request of Florida Citrus Mutual and the Florida Fruit & Vegetable Association and other similar groups in my State, I was approached by representatives of some of these retail outlets to make the amendment which you have discussed.

I resubmitted the matter to my producer groups in Florida and found them opposed to any elimination of these retail groups, and similar cases to the ones mentioned by you were brought to my attention at that time.

Mr. GRANGE. Yes, Senator. As I said, it was our understanding—and I have discussed it with the representatives from the retailer group and the broker group—that there were two main reasons given to support their position.

The first was that they could be excluded without impairing the effectiveness of the act significantly. That is the point I am trying to hammer on to the best of my ability, because we strongly disagree with that view.

Senator HOLLAND. I found strong disagreement with that view on the part of the groups which I have just mentioned in my own State, which principally represent the producers and the shippers.

Mr. GRANGE. And the second point was the one about the equity of the fee which, as I have said, we do not object to in principle as long as it is equitable and can be worked satisfactorily without tremendous cost or difficulty to everybody concerned.

Referring now to the frozen food brokers, we have actually had during the last 3 years 37 complaints where a frozen-food broker has been the complainant and they received payments of \$36,426 as the result of the orders that were issued or the complaints that were filed—these are both informal and formal—and we have had 18 cases where the broker has been the respondent and the brokers have paid \$5,262 as a result of action taken under those complaints.

The examples are:

(1) Two brokers filed PACA complaints against a third broker for payment of brokerage fees due on sale of frozen cauliflower. Sale made in April 1960. Complaint filed in January 1961. Payment in full of \$1,161 made to the two complaining brokers in April 1961.

(2) Associate broker filed PACA complaints against originating broker for payment of brokerage fees due on sale of frozen apricots and cherries. Sale made in July 1960. Complaint filed on December 8, 1960. Payment in full of \$608 made on December 30, 1960.

(3) Broker, in name of his principal, filed PACA complaint against buyer for failure to pay for load of frozen strawberries. Sale made in July 1960. Complaint filed in November 1960. After several contacts by PACA, buyer made payment in full of \$1,479 and broker then received his brokerage fee from the seller.

We frequently have the broker filing the complaint in the name of his principal and conducting that service for him. Probably, under their contract, he is still entitled to payment whether the seller receives his money or not, although I believe there are quite a number of them that actually operate on the basis of waiting until the principal receives his payment before expecting to receive their fee.

Senator HOLLAND. When the broker is in closer contact with the buyer—

Mr. GRANGE. Yes?

Senator HOLLAND (continuing). It is natural that in many cases he is in a better position to make the complaint.

Mr. GRANGE. Right. He has the facts and information, too, Senator.

(4) Buyer filed PACA complaint against seller seeking rebate of freight charges to intermediate point on carload of frozen corn. Broker's written confirmation of sale showed sale was made f.o.b. point of storage, not f.o.b. point of original shipment. Seller rebated \$977

to buyer. (Broker was not directly involved in this case but it shows necessity of having access to broker's records and means of enforcing PACA requirement that brokers issue written confirmations of sale in order to properly investigate and handle complaints.)

Senator HOLLAND. In other words, this last illustration shows that enforcement of the act is not along a one-way street?

Mr. GRANGE. That is it exactly, Senator.

Senator HOLLAND. The seller may be at fault as well as the buyer?

Mr. GRANGE. Yes. We have found in any transaction, whether fresh fruits and vegetables or frozen fruits and vegetables, if a broker is involved it is highly desirable, if not essential, to be able to contact the broker and obtain from him the necessary information that he has concerning the facts of the transaction.

And since he is licensed, he is required to maintain certain records and issue certain confirmations as we spell out in our regulations, and of course, under the law we have access to his books and records to verify all the details of the transaction.

So we think the brokers are very essential in our coverage if we are to do a reasonably satisfactory job of carrying out our responsibilities under the act.

Senator HOLLAND. Thank you, Mr. Grange.

Senator Talmadge?

Senator TALMADGE. No questions.

Senator HOLLAND. Thank you, sir.

The next witness is Mr. John C. Datt.

STATEMENT OF JOHN C. DATT, ASSISTANT TO THE DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION

Mr. DATT. I have a very brief statement, Senator Holland.

We appreciate this opportunity to present the views of the American Farm Bureau Federation on the proposed legislation to amend provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

We have a particular interest in this legislation because many Farm Bureau members produce and market substantial quantities of perishable agricultural commodities. As producers of many of the perishable agricultural commodities, they are not directly regulated by the provisions of the Perishable Agricultural Commodities Act. However, they have a vital interest in the act because as producers they are concerned about the practices governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. The kind and type of marketing rules that exist are very important to producers.

The Perishable Agricultural Commodities Act provides for the establishment of certain rules and regulations governing the distribution and marketing of fresh and frozen fruits and vegetables in interstate commerce. We have been vitally interested in these rules and regulations and have worked with the fruit and vegetable industry on several occasions to see that changes have been made in the act so that it meets our current marketing conditions.

Under the rules and regulations of the act producers are provided with a certain amount of protection in the marketing of their products. They have the assurance that the practices that occur at later stages in the marketing and distribution system will not be abusive and harm the handling of their produce.

The proposed amendments to the Perishable Agricultural Commodities Act are designed to bring the act up to date. In September 1960 the American Farm Bureau Federation Board of Directors recommended that Farm Bureau support amendments to the Perishable Agricultural Commodities Act to include the following points:

- (a) A clear-cut basis for relicensing or employing individuals who have lost their license or who have otherwise violated the act;
- (b) An opportunity for hearing if damages claimed exceed \$1,500;
- (c) A general reports provision to enable closer appraisal of trade practices;
- (d) A provision to withdraw Perishable Agricultural Commodities Act funds from support of the Export Apple and Pear Act.

It is our understanding that the proposed legislation includes these as well as other changes. We, therefore, support the passage of this legislation. We hope that it will be given early favorable consideration.

We appreciate the opportunity of presenting the viewpoint of Farm Bureau members on this matter.

Senator HOLLAND. Thank you, Mr. Datt.

Senator Talmadge?

Senator TALMADGE. No questions.

Senator HOLLAND. Thank you, sir.

Mr. DATT. Thank you very much.

Senator HOLLAND. The next witness is Mr. Kenneth Naden, secretary, National Council of Farmer Cooperatives.

Mr. Naden?

STATEMENT OF KENNETH D. NADEN, SECRETARY, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. NADEN. I have a short statement, sir, which I would like to read into the record, if I may.

Senator HOLLAND. Proceed.

Mr. NADEN. The National Council of Farmer Cooperatives is an organization of 122 National, regional, State, and local farmer co-operative associates with which there are affiliated some 5,000 local farmer associations serving approximately 2.75 million farmer memberships for whom these associations purchase farm production supplies and market the commodities which their farmer members produce.

We welcome the opportunity to comment on the provisions of this bill, S. 1037, since the Perishable Agricultural Commodities Act (PACA) has been a constructive force in establishment of competitive rules of trading in the fruit and vegetable industry. The purpose of the Perishable Agricultural Commodities Act is to establish rules of fair trading and a mechanism or procedure whereby alleged violation of those rules can be investigated and adjudged by an impartial organization but without the time delays and expense of regular court procedure. It is designed to protect either buyers or sellers who are in a weak competitive position and cannot enforce terms of sale. It

is an instrument to make the Government an umpire in an industry program of fair competition. It is our view, based on the experience of members of our organization, that this law has achieved fair success in accomplishing its objective.

From our study of the bill before us, its purpose is to make minor revisions in the Perishable Agricultural Commodities Act in order to make the law more useful and effective. It does not change the intent of the law or the major operating procedures under which the Perishable Agricultural Commodities Act has been operating. It is designed to plug loopholes for evasion of the regulations, to clarify the operating procedures, and to clarify the penalties imposed for violation.

In general, we support and urge the adoption by this committee of the recommendations contained in the bill with the exception of section 2 pertaining to the increase in fees which we will discuss in more detail later.

We especially want to applaud the method which the U.S. Department of Agriculture and the fruit and vegetable industry have used in seeking industry understanding and support for this law. The procedure of annual industry conferences at which all segments of the industry are represented is one important method used for arriving at a consensus regarding revisions of the regulations. Some members of the National Council of Farmer Cooperatives participated in these annual conferences.

We will not give a detailed explanation and justification for each of the various sections of the bill which we support. The explanation of the need for these provisions are contained in the reports of the industry—Perishable Agricultural Commodities Act conferences for recent years. We will confine our attention, therefore, to the only portion of the bill, section 2, which we question because of the related issue of multiple licensing. This provision to raise the fees charged for covering expenses for the administration of the Perishable Agricultural Commodities Act is disturbing to certain federated cooperatives.

The proposed increase in fees, although supporting a proper objective of covering costs of administration, becomes burdensome to federated cooperatives and their farmer members because the fee is simply multiplied by the number of local shipping organizations. The issue of multiple licensing of the local packinghouses of a federated cooperative has been opposed by certain federated cooperatives for several years. This was considered by them to be completely unnecessary since multiple licensing did not afford any additional protection to buyers or appear to serve the public interest. About 2 years ago, after considerable negotiation with USDA, these cooperatives agreed to licensing of each of their local shipping associations. Now there is considerable apprehension among these local associations that the \$50 maximum fee for each license, as listed in section 2, would immediately become the minimum and a doubling of license fees would be burdensome to a federated cooperative.

Previous discussion by Perishable Agricultural Commodities Act—industry conferees had indicated that license fees might be raised by about \$10. It is our recommendation that the language of section 2 be amended to insure that Perishable Agricultural Commodities Act

license fees be raised only in small increments no larger than \$5 or \$10 per year to a maximum of \$50. In this way licensees could be assured that fees would rise only in accordance with costs of administration and be assured that the \$50 maximum does not immediately become the minimum. In view of continually rising costs, it is important that these fees be spread over a number of years.

We understand that the decision by USDA for multiple licensing of federated cooperatives was based on the fact that the local shipping organizations are separate legal identities. Most of the large federations are composed of separately incorporated units; therefore licensing was extended to each individual member organization. However, a centralized operation, even with many individual unincorporated units, would still be required to pay for only one license—even though the total volume of business might be far larger than that of a federated cooperative. This could be true of either a farmer cooperative, a commercial shipper, or a retail chain organization. This situation, therefore, at least raises the question as to whether the fact of separate legal identification is a fully equitable and adequate basis for licensing. There is both an economic and legal relationship existing between a firm and the physical plants through which it performs certain operations. Perhaps membership or operational cohesion, as in the case of retail food chains, or even volume, might well be studied as a more valid basis for licensing.

SUMMARY

We believe the proposals in this bill for strengthening the PACA are constructive provided section 2 is clarified to prevent an immediate doubling of license fees.

We appreciate the opportunity to express our views to this committee.

Senator HOLLAND. Have you discussed this question of preventing an immediate doubling of the license fees with those who administer the act?

Mr. NADEN. Yes, sir; we have.

Senator HOLLAND. You know, of course, their program is to increase by \$10 at once. That would seem to be in accord with your own ideas.

Mr. NADEN. Yes, sir.

Senator HOLLAND. But have you discussed with them any wording which would require a step-by-step approach in the event further increase should be required to meet the rising costs which are rising to them just as they are with your members?

Mr. NADEN. That is right.

No, sir, we have not. That suggestion has merit. We might do that.

Senator HOLLAND. I would suggest that you and Mr. Grange and other representatives of the administrative side of this setup get together with the view to accomplishing that by simple wording. I think Mr. Grange's statement must be reassuring.

Mr. NADEN. It is; yes, sir. We did not have that available at the time we wrote this.

Senator HOLLAND. Personally, as one of those who is very much interested in this act, I would have no objection to appropriate word-

ing which would require the process to be followed somewhat in line with what has been suggested by Mr. Grange and somewhat in line with the suggestion which you have made. Yet, I would not want to see the enforcement of this act hindered by inadequate financing or to see us fail to recognize that the administrative costs of those charged with the administration of this act have gone up just as the administrative costs of those who are served by this act have gone up. I am sure you recognize that fact.

Mr. NADEN. Yes, sir; we certainly do.

Senator HOLLAND. Senator Talmadge?

Senator TALMADGE. You have covered the only point that arose in my mind, Mr. Chairman.

Senator HOLLAND. Is there any other amendment in this act, or stipulation in the act, which seems needed by you?

Mr. NADEN. No, sir.

The only point of discussion is about the adequacy of the legal basis for licensing, but we are not asking for an amendment on that act but raising it for possible clarification.

Senator HOLLAND. Thank you very much.

The next witness is Mr. Alan T. Rains, executive vice president, United Fresh Fruit & Vegetable Association.

Mr. Rains?

**STATEMENT OF ALAN T. RAINS, EXECUTIVE VICE PRESIDENT,
UNITED FRESH FRUIT & VEGETABLE ASSOCIATION**

Mr. RAINS. Senator Holland, I have a brief statement. I think it would be better to read my statement, if it is all right with you.

Senator HOLLAND. Yes, sir.

Mr. RAINS. To begin with, Mr. Chairman, I would like to read into the record a telegram I received from Joffre C. David, secretary-treasurer, Florida Fruit & Vegetable Association, of August 4, 1961.

It is addressed to me, Alan Rains, executive vice president, United Fresh Fruit & Vegetable Association [reads]:

This will authorize United Fresh Fruit & Vegetable Association to speak for the Florida Fruit & Vegetable Association when S. 1037 comes up for hearings before Senate Agricultural Committee since we concur with the views of your organization in support of this legislation.

I have a letter from Frank W. Castiglione, executive vice president of the Western Growers Association, under date of August 4, addressed to me [reads]:

The Western Growers Association represents the vegetable and melon growers and shippers of California and Arizona, who ship to the Nation's markets in excess of 300,000 carlots and/or trucklots annually. California and Arizona produce approximately 40 percent of the Nation's total of this perishable food-stuff.

Our industry fully endorses the amendments to the Perishable Agricultural Commodities Act proposed by Senate bill 1037.

I shall appreciate it very much if you will so certify for us at the hearings to be held on this bill.

Senator HOLLAND. These two organizations who have thus communicated their support to you are the largest of the vegetable shipping organizations, are they not?

Mr. RAINS. Yes, they are the two largest regional or State groups, Senator.

Senator HOLLAND. And they are associated with your United Association which is the national organization?

Mr. RAINS. Yes, we are the national organization. As a matter of fact, these organizations are members, as well as many of their members are members of ours.

Senator HOLLAND. Thank you, sir.

Mr. RAINS. My name is Alan T. Rains and I appear here today as the executive vice president of the United Fresh Fruit & Vegetable Association. This is a national association representing all factors in the fresh fruit and vegetable industry with a membership of approximately 2,700 who reside in all the States. We endorse Senate bill 1037 and concur with Secretary Freeman's report to Chairman Ellender of the Senate Committee on Agriculture and Forestry. We respectfully urge the favorable action of this committee.

The fresh fruit and vegetable industry is proud of its record of developing, fostering, and operating under the Perishable Agricultural Commodities Act for more than 30 years and for having supported the previous eight amendments to the act which strengthened or clarified it or authorized an increase in the license fee. We are also proud of the fact that this is not only an industry-initiated statute but also one that is self-supporting except for the legal administrative services which are paid for out of appropriated funds.

While we do not suggest that this committee act with undue haste, we do feel that there is considerable urgency here. In the first place, the Department of Agriculture has had to call on a rather small reserve to administer the act for the last 2 years, and since we do not want the Department's PACA services reduced, there appears to be only one solution and that is to increase the license fees. In this connection, I believe it should be emphasized that while this bill authorized a maximum license fee of \$50, an increase of approximately \$10 is presently contemplated. We believe the requirements that the Secretary must meet in order to increase the license fee are adequate protection, particularly in view of the Department's excellent administrative record and understanding of the industry's problems.

In the second place, there is need for clarifying the licensing and employment provisions of the act where a license has been revoked or suspended. Or, for that matter, where a licensee has violated the act in any way. This bill undertakes to accomplish this and the sections of the act dealing with these subjects have been substantially rewritten.

We attach considerable importance to the licensing and employment sections of the bill because we believe they plug up some loopholes that have long been in need of attention. Here I have recited an instance which I am familiar with in the Department and which Mr. Grange read into the record.

For instance, a licensee may have his license revoked and then arrange for his wife to take out a PACA license. She may be gainfully employed as a bookkeeper or secretary or a schoolteacher, for that matter, and may only concern herself with the activities of her newly formed firm by executing those documents that require her signature. In the meantime, her husband would run the firm even though his title might be "janitor" or "truckdriver." The Department con-

ceivably could be hard pressed to prove that the so-called truckdriver or janitor husband was, in fact, acting in a responsible position in which case the "wife-licensee" would need to comply with the bonding requirements of the statute. This may sound like a farfetched example but I think it would not be difficult to find cases in the records of the Department that would be practically on all fours with the one I have just described.

In other words, we urge that the Department be given the authority to make it impossible for persons with a record of suspensions or revocations to engage in the fresh fruit and vegetable industry in a responsibly connected position unless the bonding requirements of this bill are met.

It is my understanding that there will be some opposition to this bill expressed in terms of amendments that would release certain classes of licensees from the act. While I have not seen the actual language which may be submitted to this committee, I believe the underlying plea will be that the small licensee is being unduly burdened by a license fee without receiving commensurate benefits or services.

In this connection, I should like to call to the attention of the committee that, to my best information and knowledge, during the more than 30 years that this statute has been in effect, and during the hearings before the committees of the Senate and House of Representatives on amendments to the act, there has not been one witness who has urged that any group of licensees be exempt from the provisions of the act and allowed to trade in commerce in the commodities covered by the act.

I think it should be borne in mind that probably the small licensee should be more interested in the protection he is afforded by PACA than the larger licensee for the simple reason that by virtue of his smallness and likely lack of financial strength he is hardly in position to retain legal counsel in order to protect his rights in the case of a controversy involving terms of the contract, good delivery or variety of other questions that arise regularly in the course of trading in these highly perishable commodities. A PACA licensee, large or small, is as close to good, sound advice as his telephone because all he needs to do is to call PACA, either in Washington or one of the field offices, to get advice or an opinion from a qualified representative. PACA handles some 8,000 informal inquiries such as this each year with the result that most of the misunderstandings and disputes are settled amicably. It would seem, I believe, that the reasonable license fee that is charged is, indeed, a small amount for such a valuable service.

Senator HOLLAND. Right there, it is a fact, is it not, that a small shipper or producer who requires the help given by this act finds it available without any formal pleadings, without the retaining of a lawyer, simply by making his informal complaint to the closest office of PACA?

Mr. RAINS. That is right, Senator.

I could recite any number of cases where licensees, small or large, get into a controversy. They may be 2,000 miles apart; they may be 500 miles apart. And when the facts by both parties are recited to a representative of PACA, most of the time they take the advice of the PACA representative and settle it.

Senator HOLLAND. The old situation under which there were so many complaints that a few brokers were being unfaithful to the trust of those who shipped to them, that time is gone forever under this act, is it not?

Mr. RAINS. That was the turning point in this industry, Senator, when PACA was put on the books. It put long pants on this industry.

Senator HOLLAND. It meant that reputable practices at once became the order of the day, whereas there had been many instances prior thereto when such was not the case.

Mr. RAINS. Yes.

The act was born of industry necessity. Something had to be done.

Perhaps it should be pointed out here that PACA serves every factor trading in the commodities covered by the act, and neither by design nor practice is it of special benefit to any one group of operators.

My authority for appearing here in support of S. 1037 is a resolution unanimously adopted by the United Fresh Fruit & Vegetable Association at its annual convention in New Orleans January 26, 1961.

Senator HOLLAND. This is a large convention. About how many members were there?

Mr. RAINS. We had around 2,500 registrations, Senator.

This resolution was endorsed unanimously by this association's advisory board which acted upon the recommendation of the PACA-industry conference group which has been studying this problem since the middle of 1958. The industry conferees unanimously approved the substance of this bill at their meeting in New Orleans on January 20, 1961. That was the fourth such meeting that this group had had.

It may be of interest to the committee to know that the industry conference group is composed of approximately 25 industry members engaged in various activities including shipping, wholesaling, and retailing. In each category, there are representatives of the small and large firms and each, I believe, understood thoroughly the objectives of the conference group.

The Department of Agriculture has been meticulous in seeing to it that reports of all the conferences have been sent to all members of the group. As case in point, on April 24, 1961, a complete report was sent to all of the conference members who attended the New Orleans meeting as well as to all who requested a report. I call this to your attention, gentlemen, because I thought you would be interested in learning of the great care that the Department of Agriculture has taken in soliciting the suggestions and recommendations of persons who operate their businesses under the Perishable Agricultural Commodities Act.

Senator HOLLAND. A question there.

The formulation of the substance of this bill has been a matter of how many years' study by the industry as a whole which you represent?

Mr. RAINS. This bill?

The first meeting of the PACA conference group was either the last of June or the first of July in 1958, and the fourth meeting was in New Orleans in January.

Senator HOLLAND. And the formulation of a specific bill to cover this subject matter has been a continuous study of this group?

Mr. RAINS. Yes.

And every point in the bill has been given complete review, and, as I indicated in my statement here, was unanimously endorsed by the conference group.

In urging your favorable action, I would like to repeat a statement that was made early in Perishable Agricultural Commodities Act history—a statement which I believe not only applies today, but will be applicable through the ages, and that is this—“Perishable Agricultural Commodities Act says thou shalt not steal and thou shalt not lie.” This would not seem to burden unduly any businessman.

That concludes my statement, Mr. Chairman.

Senator HOLLAND. Senator Talmadge?

Senator TALMADGE. No questions.

Senator HOLLAND. Thank you very much, Mr. Rains. I appreciate your appearance.

Mr. Henry Bison, Jr., general counsel, National Association of Retail Grocers of the United States.

Mr. Bison?

STATEMENT OF HENRY BISON, JR., GENERAL COUNSEL, NATIONAL ASSOCIATION OF RETAIL GROCERS OF THE UNITED STATES

Mr. BISON. Senator Holland, Senator Talmadge, it is a pleasure to be here.

We are grateful for this opportunity to express our views on S. 1037. This bill, authorizing an increase in the annual license fee under the Perishable Agricultural Commodities Act from \$25 to \$50, is of great concern to our members.

The National Association of Retail Grocers of the United States (NARGUS) represents local food store operators across the Nation. The association is a federation of over 200 State and local associations of food retailers. Three-quarters of NARGUS members are located in towns and cities of less than 100,000 population. Some 80 percent are affiliated with voluntary or cooperative buying groups.

I

First, let me make it clear that we are here seeking an amendment which provides after line 4, on page 2, of the pending bill, S. 1037, as follows:

(11) No person buying any perishable agricultural commodity solely for sale at retail shall be considered as a “dealer” in respect of any such commodity in any calendar year: *Provided*, That not less than 90 per centum of his purchases of such commodity in such year are from one or more licensed wholesale suppliers. For the purpose of this subsection, the amount of such purchases shall be determined on the basis of net invoice cost to the retailer.

The purpose of this amendment is to exempt from coverage under the Perishable Agricultural Commodities Act those food retailers who purchase 90 percent or more of their fresh and frozen fruits and

vegetables from one or more wholesalers licensed under the act. Such wholesale suppliers include independent service wholesalers selling fresh produce to retail customers, frozen food wholesalers, and co-operative and voluntary groups selling fresh or frozen fruits and vegetables to retail distributors.

At present, food retailers buying their fresh and frozen fruits and vegetables from wholesalers are nevertheless required by the Department of Agriculture to have a license under the act when they purchase 1 ton or more in weight per day on at least 21 days in a calendar year. Under the act, each purchase must be in interstate or foreign commerce. But the Department of Agriculture applies the act to retailers buying a commodity that has at any time moved across a State line as being in interstate commerce, even though the retailer made the purchase from his wholesaler in a purely local transaction.

The proposed amendment would not exempt large retailers who perform the wholesaling function in the purchase of their fresh and frozen fruits and vegetables. Such retailers purchase a large part of their produce requirements directly from producing areas for shipment to their central warehouses. In so doing, they bypass the wholesale markets where their stores are located.

According to a recent survey made by USDA's Agricultural Marketing Service, 26 percent of all receipts of fresh fruits and vegetables in 23 leading terminal market areas of the country are delivered directly from producing areas to central warehouses of large-scale food retailers. These receipts do not pass through wholesale markets.

In 10 market areas of Cleveland, Cincinnati, Detroit, Chicago, Louisville, St. Louis, Kansas City, Minneapolis-St. Paul, Dallas, and New Orleans, 32 percent of total receipts of fresh fruits and vegetables during the period September 1960, and March 1961, were delivered directly from producing areas to warehouses of large-scale food retailers.

Retailers exempt under the proposed amendment would be required to purchase at least 90 percent of their requirements from licensed wholesalers. They would therefore make the vast percentage of their purchases from wholesale suppliers licensed under the act. Retailers having appreciable dealings with growers, growers' agents, commission merchants, and terminal markets would not qualify for the exemption.

II

We believe that the proposed amendment is not in conflict with the purpose of the Perishable Agricultural Commodities Act. The law was primarily designed to protect growers, shippers, and terminal receivers of fruits and vegetables against unwarranted rejections and failure to carry out contracts.

It can hardly have been the intent of Congress in passing the Perishable Agricultural Commodities Act to provide machinery for the enforcement of contracts made between produce and frozen food wholesalers and their retail customers. In the event of failure on the part of a retailer to pay his bill, or to live up to his contract with his wholesaler, there is certainly no need for Federal control or regulation. And if the Government does so in the case of a sale of fresh or frozen fruits and vegetables, then the same principle of Federal

intervention would apply with equal validity to sales of meats, dairy products, and many other articles or commodities sold in a food store. There is no justification for the Federal Government concerning itself with the enforcement of contracts involving the sale of fresh or frozen fruits and vegetables between a wholesaler and his retail customer.

Retailers purchasing 90 percent or more of their fruits and vegetables from licensed wholesalers in purely local transactions were not the concern of Congress when it passed the act 31 years ago. These retailers are not large direct buyers from producing areas. They are not direct receivers of shipments from producing areas.

If there is a dispute over a shipment between a retailer and a wholesaler, both the buyer and seller are quite capable of adjusting their disagreement without the intervention of the Federal Government. Furthermore, the size of a claim that might arise in such a situation would ordinarily not justify the expense of a Federal inspector and processing the case through the procedures provided.

There is no question that wholesalers rarely—if ever—file complaints under the act against their retail customers. In fact, there is some question about the lack of complaints filed by shippers or terminal market operators against large chain buyers. This point was discussed at a conference with fresh fruit and vegetable industry leaders and officials of the Department of Agriculture in 1958. The following comment is taken from a report of this conference proceeding:

The question is whether or not the scope of the act is now adequate led into a lively and extensive discussion of unwarranted rejections by chainstores and other large buyers. It was pointed out that because Perishable Agricultural Commodities Act complaints usually are not filed against such buyers, the application of the act in this respect is almost entirely confined to other dealers, commission merchants, and brokers. As stated by one industry representative, big buyers and chainstores get away with rejecting shipments when they do not want them, but the small buyers have to take the shipments or otherwise complaints under Perishable Agricultural Commodities Act will be filed against them by the shippers. It was recognized that when the parties to such transactions do not complain, even though they are unhappy with a particular rejection, then USDA has no specific basis for knowing of the alleged violation and, consequently, does not enter into the matter. Industry representatives all acknowledged that the complaints and threatened complaints against such large buyers are practically nonexistent because the individual shipper or terminal market operator believes that he cannot take the risk of alienating such customers even though he might be successful in forcing them to accept the particular shipment in question.

If, as seems to be the case, many shippers and terminal receivers are reluctant to file complaints against large chain buyers, it is difficult to see the justification for licensing food retailers who purchase most of their requirements from licensed wholesale dealers. What benefit such retailers receive from the \$25 annual license fee they now must pay, or the \$50 proposed in the pending bill, is hard to imagine.

The plain fact of the matter is that retailers relying on licensed wholesale dealers for the vast percentage of their fresh and frozen fruits and vegetables should not be licensed under the act at all. Such application of the law serves no useful purpose at all.

Enforcement of contracts between retailers and wholesalers is not a proper function of the Federal Government. The Department of Agriculture has more than enough to do in meeting its responsibilities to assist the advancement and development of American agri-

culture in these unsettled times without wasting its resources by attempting to license and regulate thousands of retailers in the purchase of perishable fruits and vegetables from licensed wholesalers.

III

Imposition of the licensing provision of the act on retailers purchasing 90 percent or more of their fruits and vegetables from licensed wholesalers constitutes a hardship on such retailers. In 1930, when the act was originally passed, the annual license fee was \$10. In 1950, it was raised to \$15. Six years later it went up to \$25. Now the proposal is to authorize a 100-percent increase to \$50. Undoubtedly, in a few years the fee will need to be raised again.

Another factor of considerable concern is that every person, firm or corporation licensed under the act pays the same annual fee. A food retailer licensed under the act who purchases as little as \$20,000 worth of fresh fruits and vegetables a year is required to pay the same fee as a large shipper handling many millions of dollars worth of produce every year. A large retailer with hundreds of supermarkets pays the same license fee as a small store operator.

Another hardship on independent retailers is that the use of weight of purchases for the purpose of determining coverage under the act makes it difficult for many to avoid violating the law. It is only when a retailer purchases one ton or more in weight per day on 21 days in a calendar year that the law requires him to have a license. It is hard for many retailers to know when the level of their operations requires a license. When they fail to apply for a license through inadvertence, the Department says it will consider payment to cover the past 2 years of operations as constituting satisfactory settlement of their past liability under the act.

This means that thousands of food retailers who do not now have a license may be required at sometime in the future to pay an initial fee of \$150 (\$100 in accrued fees for 2 years of operations and \$50 for the year in which the retailer applies for a license) if the license fee goes up to \$50.

There are food retailers presently covered by the act who have never applied for a license. In a study made for the Department in 1955, it was conservatively estimated that 7,550 independent grocery and combination store firms were subject to license under the act. In 1959, there were only 2,787 retailers (including chains) licensed. If 200 of these are chains, it leaves roughly 2,587 independents licensed in 1959 out of a potential of 7,550, according to the study made for the Department. In effect, if these figures are correct, there are at the very least 5,000 independent food retailers in the country who could be forced to pay an initial license fee of \$150 plus \$50 per year thereafter if the pending bill is approved in its present form.

The Department follows the practice of contacting retailers by mail and suggesting that they file an application for a license (which is attached to the letter the retailer receives) if they are covered. But the act does not apply unless they buy fresh or frozen fruits and vegetables that originate from out of the State, aggregating one ton or more during a day, or any single transaction of a ton or more, and have more than 20 such transactions in a calendar year.

This method of determining coverage is enormously difficult for retailers. They either need to spend a great amount of time, money and effort checking their purchase records, or pay the license fee demanded. And since weight of each purchase—as well as origin of each commodity—and the aggregate weight of both fresh and frozen fruits and vegetables purchases per day are all factors which determine coverage, it frequently happens that the retailer's records are not at all adequate to determine coverage.

In such letters sent by the Department to retailers the following statement is made:

If your business comes within the provisions of the act, you should complete the application and forward it to this office together with the \$25 annual fee. If you have been operating subject to the act without a license and the violation has not been willful, you may settle your license liability by paying the fees that accrued during the period of such operations. These fees are to be computed using the table on page 2 of the application.

Because of the "20 transaction exemption," it may not be feasible for some retailers to determine when their purchases of fruits and vegetables first reached the level to require a license. If this is true in your case, and you have been operating more than 2 years, you should furnish on page 3 of the application a statement of your inability to determine the date you first became subject to license. You should answer question 13 by stating, "at least 2 years." You may then settle your license liability for past operations by paying \$50 plus \$25 for the current fee. If you have been operating for less than 2 years, it is probable that your records will show when you became subject to license.

If you believe that you are not required to have a license, please give us your reasons.

In view of the penalties for operating illegally without a valid license, this matter should be given your prompt attention.

Consider for a moment what practical chance many retailers receiving such a letter as this have in showing that they are not required to purchase a license. In most instances, they have never heard of the Perishable Agricultural Commodities Act, and never imagined that a Federal license was necessary to operate a food store much less understand the complex method by which coverage of retailers under the act is determined.

IV

Our plea is certainly not one based on opposition to the basic purpose of the act. Neither do we oppose the pending bill except as it fails to carry out that purpose.

Application of the license provisions of the act to retailers buying 90 percent or more of their fresh and frozen fruits and vegetables from wholesalers licensed under the law serves no useful purpose and imposes an unjustifiable tax on thousands of retail businesses.

We respectfully urge that the proposed amendment is reasonable and not in conflict with the basic purpose of the act, or its efficient administration.

We ask that the pending bill be amended as we have recommended. Both justice and good sense require this action to secure sound legislation in the matter.

Senator HOLLAND. Thank you, sir.

Do you have any substitute method to suggest which you think would be fairer to the retail stores than the present standard of a ton per day over 20-day purchase of out-of-State perishable products?

Mr. BISON. Senator, as you know from our statement, our main position is that we do not think we should be licensed at all.

Now, we do not have anything to offer to the committee on changing the standard of coverage because we disagree with the idea that a retailer who purchases his produce from a wholesaler in a local transaction is subject to Federal Government jurisdiction. This is a basic principle with us.

We do not think the Federal Government should license a retailer at all in a local transaction.

We fear Federal interference of this kind that goes from one law to another. You really do not know where it will end up finally.

We opposed the wage and hour bill, as you know, Senator, where we had a similar situation covering goods that move or have moved in commerce.

So our position here is one of basic principle. I know, as one of the few witnesses opposing the bill, we are in an unpopular position, and I hope you will understand that we are doing so with good intentions.

Senator HOLLAND. Have you ever asked for this exemption in the long history of the Perishable Agricultural Commodity Act prior to this time?

Mr. BISON. No, we have not, Senator.

I think the main reason is this:

Many, many of our people, our members, are complaining about this. If it goes to \$35, \$45, and then \$50, we are going to have a lot more complaining. I think this is going to be a growing problem as the fee goes up. This is what concerns us, Senator.

Senator HOLLAND. I notice you stated that under the regulations now existing you might be required to pay as much as \$150 a year.

You do not mean in paying for 2 prior years they would have to pay at a rate that did not exist at that time?

Mr. BISON. Oh, no, I do not mean that, Senator. I mean some time in the future this could happen.

Senator HOLLAND. You mean if it ever got to \$50 and then went on for 3 years under that, that one who had been delinquent for the first 2 of those 3 years could be required to pay as much as \$150?

Mr. BISON. I think that—

Senator HOLLAND. You heard, of course, the testimony of Mr. Grange today, and, likewise, recited by Mr. Rains in his statement, that it was understood that an immediate increase of \$10 was suggested?

Mr. BISON. Yes.

Senator HOLLAND. And there was discussion of wording which would require the rate to go up gradually, and after hearing in the event it was found necessary to go up beyond the \$35. Is that reassuring to you?

Mr. BISON. Well, now, not particularly, Senator, because I think the fact that the Department is asking for authority to raise it to \$50 would indicate that at some time in the future—if the law is changed, and I do not know when—the fee is going to be \$50. If they did not think they were going to raise it to \$50 eventually or sometime in the future, they would not ask the Senate for the authority.

They are going to use it or they would not ask for it. So we have to assume—we do not know the date or the year—we have to assume that at some time it is going to be \$50. We do not know when that will be.

I have one other comment to make, Senator.

I would just like to say to you that the effort here is to raise the fee so that the members of the industry will finance the enforcement of this law. It will be self-financing. But it seems highly unfair to us representing small retailers that we are required to pay the same fee. A single unit operator is required to pay the same fee, as an operator that may have 100 stores, 100 supermarkets, 500 supermarkets, or 1,000.

I do not know, there is no limit, because it is on the basis of corporation regardless of number of stores it operates.

So it seems to us that if this is going to be self-financing, there ought to be some equity in the financing. You ought not to charge everyone the same fee when one person might buy \$4,000 worth of merchandise a year and another might buy \$4 million or \$40 million.

I do not know what the figure would be. But there is something basically wrong with that method of self-financing. Now, we know that many people in the produce industry like it the way it is now. But, obviously, they are getting the best of the bargain, and it is only natural that they would like to keep it.

Senator HOLLAND. Of course, the committee is concerned primarily with the protection to be given to producers under this whole setup.

Mr. BISON. Yes.

Senator HOLLAND. And the evidence given by Mr. Grange shows rather conclusively that there have been cases in which the outlets of the type that you represent have complained and also have had complaints filed against them, in which speedy adjustments followed the intervention of PACA.

Are you contending that it would be more difficult for your group to show that it should be exempt under this act if the pending act were passed than it is under the present law?

Mr. BISON. No, Senator, I am not contending that, because I think the coverage is the same. If S. 1037 is passed, I think the coverage is the same. I do not think that changes it. Our main concern with S. 1037 does not deal with any other provision.

Senator HOLLAND. Are you contending that if it has been shown under the operations under existing law that it was advantageous to the producers to include the group of outlets that you represent, that it would not be equally advantageous to cover those same outlets under the amended law?

Mr. BISON. Our position on that question, Senator Holland, is this:

Our amendment on this provides that if a retailer buys through wholesalers the vast bulk, 90 percent, of his purchases, that is a local transaction. The grower in the growing area and the problems that this law was passed to cure, are not involved in this sort of a situation.

It is only when retailers are receivers of shipments from out of the State or from a growing area, or when they go to the growing area and have direct shipments made, that they should be licensed, Senator. This is our position.

We have members who operate warehouses. We have members who buy direct, and we are not asking that they be exempt. We are not asking that any retailer be exempt who does not buy the vast percentage of his requirement from his wholesaler.

Our theory is, again, if I can state it again, it is simply this:

In a local transaction the Federal Government should not license these people. This is not an activity the Department of Agriculture should engage in. They have more than enough to do.

Senator HOLLAND. If a claim of a faulty condition does not arise until the goods are in the hands of the retailer whom you represent, why should not the question of condition relate all the way back to the place of shipment so as to protect all concerned?

Mr. BISON. The only people that would be parties in interest in this thing would be the seller and the buyer, the retailer and his wholesaler.

Let me just say this. Mr. Grange has cited four examples of complaints. His table, however, does not indicate that all 153 complaints were filed by wholesalers. Just 153 complaints against retailers. These may have been direct-buying retailers, I do not know. But let me say this. If a dispute arises between a retailer who is a buyer and a wholesaler who is a seller in a local transaction, these two people can settle their differences without Federal supervision or control.

Senator HOLLAND. If that complaint relates to the condition of the product, why should not all parties concerned have the advantage of that complaint reaching right back to the time and place of shipment in another State?

Mr. BISON. The wholesaler would be licensed, and if there was some violation involving the wholesale supplier's rights under a contract, he would have the right to file the complaint. If it was something that happened to the merchandise before it reached him, the wholesaler, being licensed, would have the right to proceed under the law.

But we are only now covering this part of the transaction where the wholesaler sells it to the retail customer. We are simply saying this. Mr. Grange has shown four examples here. I think common-sense tells us this. If there is a dispute between a wholesaler and a retailer over a shipment, in the majority of instances, in the great majority of instances, Senator, these two people are going to settle their differences themselves.

Senator HOLLAND. Suppose the difference, though, relates to a condition of the product which will not leave the matter justly settled, but which has to be settled solely between them, because the condition might have been chargeable to something that happened in transit or something that happened at the time and place of packing or even prior thereto.

Why should not the chain be intact so that the complaint and all of the facts concerning it might relate to the whole transaction?

Mr. BISON. I think it would, Senator, if the retailer is the direct buyer, he should be licensed. If the retailer is the buyer from the wholesaler, he would not be licensed. If the merchandise became damaged at some point in transit before it reached the wholesaler, the wholesaler is licensed and he could proceed the way he does today.

Senator HOLLAND. Yes.

But the question might be a doubtful question as to when and where the damaged condition originated. If you limit the argument between your retailer and the wholesaler to those two points and that matter of time alone, why, that may not reach the time or the place where damage may be found to have originated or to have existed.

Mr. BISON. Senator, as I understand your question now, this is to find out the facts.

Senator HOLLAND. Yes.

Mr. BISON. This is to determine when the damage took place. I would not regard it as being a problem if you exempted the retailer in that case because the facts could still be adduced by evidence, by deposition. You could still produce the facts as to when the harm took place. You do not have to license the retailer to do that. These facts could be ascertained.

Senator HOLLAND. If everybody in the chain of events is licensed, then one department has access to all the records showing the condition, showing all the facts that pertain to the whole movement.

It seems to me that that is much simpler, and is almost sure to be a more equitable proceeding, than if you have two different chains that do not meet to investigate.

Mr. BISON. All I am simply saying is this:

I do not believe as a practical matter, failure to license the retailer would prohibit, or make it impossible for anyone concerned with this matter, to establish facts concerning the quality or the condition of the shipment.

I am just saying that I do not think you have to charge a retailer \$50 a year or \$25 a year or \$35 a year, or whatever it is, to have these facts adduced when the proceeding is filed under PACA.

Senator, we have never had any problems as far as our members are concerned with the operation of the law. We very seldom have a complaint filed. It is a very rare case.

So the concern of our members is simply two things:

First, they do not think the Federal Government should license them. They do not think this is a proper function of the Federal Government.

Second, this business of raising the fee, going 2 years back and then the business of trying to determine whether and when they are covered, is so difficult. These things are irritations to them.

Actually, the operation of the law is no problem to us, Senator.

Senator HOLLAND. I can see that it would be irritating to try to figure on a borderline case whether you are covered or not covered, and that is the reason that I asked you whether there was any alternative suggestion to be made as to a simpler and easier method of determination of whether you are covered or not.

But it seems to me that it is to the interests of all concerned to have one agency empowered to have access to all of the records simply asking for them and have the right to require their production, if it is refused. Then you have the whole transaction from the time the goods are brought to the packinghouse right on up to the time that they are found to be wanting when they are produced for sale to the ultimate user in your retail outlet.

It seems to me that it is highly advantageous to have that one agency with the power to do that and inspect the whole proceeding, have it all laid out there before it, rather than to have different jurisdictions and different investigations and different proceedings.

Mr. BISON. Senator, I agree with you completely, and may I say this:

I believe that we would not oppose a provision if the committee thought it necessary to include in the law the power of subpoena, to subpoena witnesses or documentary evidence. But our point is:

We do not think you have to license these local retailers to do this, to subpoena evidence. In fact, I think maybe the Government, trying these cases, having these hearings, ought to have the right to subpoena. Maybe they should. You are absolutely right, Senator. To make a determination you have got to have all the facts. I think you are completely right. We would agree.

Senator HOLLAND. If the Federal Government has jurisdiction to do what you have indicated, it would also have the jurisdiction to license. The question is a question of jurisdiction.

Mr. BISON. I do not know, I think it is one thing to subpoena records that are material to the solution of a case that is clearly within the jurisdiction of the Federal Government and it is another thing to license local retailers.

And, in fact, under this law, if the retailer does not have a license and he fails to get one willfully, and refuses to get one, the Federal Government could put him out of business because he could not purchase any fresh fruits and vegetables, fresh or frozen, in commerce, as the Department determines it.

And their definition of "commerce"—and I might say that they have some justification for it under the act—goes all the way to the retailer even though in most cases we think that the commerce ought to stop at the wholesaler. That is where it should stop.

It should not go to the retailer because if it goes to the retailer, then it might go to the consumer, and where will we stop? This is a big problem we have today, and I know that you are aware of it.

Senator HOLLAND. Thank you very much, Mr. Bison.

Mr. Watson Rogers, president of the National Food Brokers Association.

STATEMENT OF WATSON ROGERS, PRESIDENT, NATIONAL FOOD BROKERS ASSOCIATION

Mr. ROGERS. Mr. Chairman, I want to thank you for giving me this opportunity to appear before you today to present our views on S. 1037, and the need, in our opinion, for an amendment to the bill.

Before I proceed with a discussion of these views, I would like to explain that I am president of the National Food Brokers Association. Founded in 1904 this association today represents the leading food broker firms in the Nation. Our members are located in every market area. They sell a majority of the processed food and grocery products to the wholesale buyers of the Nation. A large majority of our members sell frozen food products, including fruits and vegetables.

Because it is so important to a full understanding of the position of our members, I should like to point out how a true food broker, as we define him, and as he operates in the field, differs from other brokers. Our members act solely as the agent of the seller who is the packer or processor. They do not act as the agent of the buyer, even though they provide the buyer with many services on behalf of their principal, the processor. Further, the true food broker does not buy or sell for his own account. His full allegiance is to the seller.

He cannot speculate, for that would put his own personal interest in conflict with that of his principal. He does not set the price the seller charges. As the sales agent he takes orders from the buyers to be filled by his principals. These principals are served on a regular, longtime basis, and not on a temporary, hit-or-miss basis.

As you can readily see, this type of businessman is far different from the brokers in other industries and fields, particularly in the produce field. Undoubtedly the custom and marketing practices in the fresh fruit and vegetable industry require a different type of marketing man. Brokers in that field, by custom, represent either the buyer or the seller, as the need arises. It is not unusual that such brokers even buy for their own account. Undoubtedly such purchasing is required because of the nature of the product.

We believe the PACA was basically designed for the fresh fruit and vegetable industry, particularly to protect the interests of the grower. Since the time the PACA was passed in 1930 (an entirely new industry has grown up and this has resulted in inequities in the licensing requirements under the act. Unless these inequities are corrected, they will lead to growing discontent with the act and will in time cause many in the food industry to turn against it. This could lead to a loss of the helpful provisions of the act as they apply to the fresh fruit and vegetable industry and to the growers.

When the act was passed, frozen foods were in their infancy, barely past the experimental stage. No one could then foretell the direction this new industry would take. As you no doubt know, this industry has developed along the same lines as the older canned foods processing industry. In fact, many of the Nation's canning firms also do freezing of fruits and vegetables. That is why so many freezers have turned to the use of food brokers to sell their products, for that is the way canned foods are largely sold.

Senator HOLLAND. Right there, you recognize that there is a great deal of difference in its perishability between a frozen food product and a canned food product?

Mr. ROGERS. That is right.

We have done a lot of work on that, Senator, in the last 2 or 3 months. In fact, we have got committees appointed all over the country to help do a better job with frozen foods.

To require the PACA licensing of a food broker who negotiates the sale of frozen fruits and vegetables is most unfair, for it singles out one form of processed foods from another. Yet today there is little difference between the distribution and sale of one type of product from the other food products.

Thus, there is no more justification for licensing the broker negotiating the sale of frozen fruits or vegetables than for the sale of canned or other processed fruits or vegetables, or other food products.

Senator HOLLAND. Right there, again, is there not that relative or real difference of differing perishability, one differing from the other?

Mr. ROGERS. I think just one or two more paragraphs, Senator, and then I would like to discuss that with you.

All such products are packed by or for a processor who is solely responsible for the products, their quality, method of processing, method and terms of sale. Likewise, there is no more reason for requiring such an agent of the processor to be licensed than the salaried salesman of that same processor.

As more and more canners venture into the field of processing frozen fruits and vegetables, they usually look to their regular brokers to sell these products, too. The volume per local market is small and often the broker who handles such sales usually does so in a limited way. Therefore, many brokers question if they should take out a license for the privilege of selling such a limited volume.

These brokers, who have been representing canners for a great many years, find it difficult to understand why the Government would force them to take out a license merely because their established canner principal started freezing fruits and vegetables. They would be selling the same commodities, for the same processor, and to the same buyers under the same terms. But because one part of the pack was processed differently by freezing, they would be required to have a license for selling that part of the pack.

There are frozen food processors who have their own salaried sales organizations in some areas and brokers in others. Both sales teams are performing the same service. One is paid a salary, the other by commission. Both take the information supplied by the processor and work to make their sales to the customers in their respective markets. The broker has to have a license but the salaried salesman does not. It does not make sense.

That is why, gentlemen, we believe that the bill, S. 1037, should be amended to remove from the licensing provisions of PACA the independent contractor sales agent handling frozen foods who does not buy or sell for his own account. We therefore recommend the following amendment to S. 1037:

After line 4, of page 2, of the bill, insert the following:

SEC. 2. Section 1(7) of such Act (7 U.S.C. 499a) is amended to read as follows:

"(7) The term 'broker' means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively; provided, however, that no person shall be considered a broker subject to the provisions of this Act if he is an independent-contractor sales agent and the only sales of perishable agricultural commodities negotiated by him are sales of frozen fruits and vegetables packed by or for a processor, and who does not at any time take or have title to such commodities."

Renumber subsequent sections of the bill.

Gentlemen, this amendment is most necessary now in the interests of fair and equitable treatment. With the growing increase in the licensing fee, the burden becomes greater on the broker handling frozen foods. The feeling is growing on their part that they are being penalized, with their fees being used to finance the policing of other areas in the produce field. With the different type of operation in the fresh fruit and vegetable field, such license and control may be necessary. In fact, we understand the act is most valuable to that industry. We would agree that an agent who takes title to merchandise, who represents either buyer or seller, depending on the circumstances, such an agent should be licensed. But to burden the bona fide sales agent of the processor who is himself licensed is unfair. It is particularly inequitable for a food broker who handles a small volume of frozen fruits or vegetables to have to pay the same license as some fresh fruit and vegetable shipper who ships thousands of carloads and thousands of truckloads annually.

We earnestly entreat you to incorporate our suggested amendment to your bill, gentlemen, so that when you authorize an increase in the licensing fees under PACA, you do not at the same time compound an inequity. It is most unjust to require the licensing of bona fide food brokers under PACA and it would be even more unjust to continue such licensing requirements under an increased license fee.

Mr. Chairman, if I may, I would like to refer to the remarks made on these cases just a minute, if I may. I have said that we feel that any broker who buys and sells merchandise, any fellow who speculates, should be licensed. The examples used here were where there was a so-called field broker involved. There are a lot of processors who may not have an experienced sales manager and they use brokers to handle their sales management work.

In our opinion, that kind of a broker should be licensed. That is the kind that these first two examples referred to here. They, in effect, become the principal. They are dealing with subbrokers.

In none of these instances—and, undoubtedly, they picked out the best possible cases they could get—not one of these cases would change the enforcement of this act under the provisions we have made. Not one has any bearing on it, if you license these field brokers, which they should be because they act as principals.

It goes on to say about a broker contacting this fellow who had not paid his bill. That is a local sales agent's job; a salaried salesman would do the same thing.

So, Mr. Chairman, we just feel that our funds are being used for other industries where it is needed, and there are a lot of our people who question if they should continue in the frozen food business.

Senator HOLLAND. How many brokers are there of the type that you mentioned that do not take title but merely serve as agents for their processors?

Mr. ROGERS. Mr. Chairman, we have 1,975 members in our organization. Any member who takes title or speculates in food, in our opinion, is not a true food broker, and we expel him from the association.

Senator HOLLAND. Are the processors whom you represent as brokers asking that you be exempted from this bill?

Mr. ROGERS. We have not discussed it with them.

Senator HOLLAND. It seems to me that they are the ones that should be consulted on that.

Mr. ROGERS. We are their agents and they are the ones that direct us, and if we did not do what they told us to, they would fire us; that is for sure.

Senator HOLLAND. There is no license liability for their sales agent?

Mr. ROGERS. That is right.

Senator HOLLAND. We have not heard any word from processors indicating that they think that brokers who do not serve as sales agents, but who, instead, are independent brokers should be exempted from this license.

It seems to me that they stand there in the position of the producer, because they are the ones who produce the frozen product.

Mr. ROGERS. That is right.

Senator HOLLAND. And I have heard no suggestion from any of the producers that brokers of the class whom you mentioned should be exempted from the provisions of this licensing act.

Mr. ROGERS. I have not, either, and I have not heard of any making any remark that they thought they should be.

Senator HOLLAND. The requests that reached me from people in my State cover all classes of the producers.

Mr. ROGERS. You are talking about fresh fruits and vegetables?

Senator HOLLAND. I am talking about both fresh fruit and frozen, and I have not had any exception, any producing groups that have wanted to exempt any group of distributors.

Mr. ROGERS. Senator, the main frozen food you have in your area is orange juice and that is not covered anyway. That is not a problem here. That is not involved. We sell tremendous tons of your frozen concentrate, but they are not under the act; you have very little other frozen foods.

Florida is tremendously in fresh, that is true, and we agree with you 100 percent every fresh fruit and vegetable broker should be licensed under this act because of the way they do business.

I was on a plane with a fellow. He was a fresh fruit and vegetable shipper that ships 12,000 straight cars and trucks of fruits and vegetables each year. He pays the same fee as some little broker forced into this business because some canner asked him to. This fellow receives thousands of dollars of benefit. I think these boys in the Department of Agriculture must take a realistic view of this problem. We all agree it is a wonderful law. Your bill is a good bill. The law has done marvelous things for the food industry of this Nation. There is no question about that.

It has had 100-percent support from the food industry.

But unless they take a realistic view, you are going to see the industry turn against it. This law is designed to help the industry but there is a growing discontent on it because they are not taking a realistic view, and people resent their taking their money and using it to police other people.

I think everybody ought to pay their own way on this thing, Senator.

Senator HOLLAND. You mean there has been no broker of the group that you represent that has been affected either as a complaint or one against whom a complaint has been lodged?

Mr. ROGERS. Senator, I am the president of this association and we are right in the middle of the food industry, and every day of my life I spent in the grocery business and have for 38 years.

It has been at least 10 years since I have heard from anybody in the Department of Agriculture regarding this bill concerning anything that our members have done.

If any of our members got in trouble, boy, they would be screaming their head off to me. I have heard from no one for at least 10 years. There was a time 4 or 5 years ago when the law was amended and we were asked for help in suggesting amendments.

But it has been 10 years since I have heard from anyone. I think as president of this association I would have heard from them if there is much going on concerning our membership. There is a feeling that we are just putting money in for other people.

Senator HOLLAND. What was the reason for your asking for their help before?

Mr. ROGERS. They were amending the bill and in some way it came up through someone on our committee and one of the gentlemen came over to our office and talked to some of our frozen food committee.

I guess they called us or we called them, I don't remember. We were conferring with them about amending the bill. Of course, we wanted to help them. As far as any complaint or anything, I do not know when it has been. I know it has been at least 10 years since I have heard a word from anybody from that Department.

Senator HOLLAND. All right. Thank you, sir.

Mr. ROGERS. Thank you very much, Senator.

Senator HOLLAND. Mr. A. E. Mercker, executive director of the National Potato Council.

STATEMENT OF A. E. MERCKER, EXECUTIVE DIRECTOR, NATIONAL POTATO COUNCIL

Mr. MERCKER. Senator, I have a very short statement merely relating to the fact that when we were established the Department was very considerate in appointing our past president, E. Perrin Edmunds, of Fort Fairfield, Maine, and J. Abney Cox, H. L. Cox & Sons, Princeton, Fla., as industry conferees participating in the meetings called in connection with the Perishable Agricultural Commodities Act.

I, A. E. Mercker, executive director of the National Potato Council, was appointed observer for the council for the same purpose and have attended the meetings called in connection with improving the Perishable Agricultural Commodities Act.

As far as I know, I attended all of the meetings.

At the National Potato Council's 11th annual meeting, held at Chicago, Ill., in 1959, the following resolution was passed:

The council commends the PACA for its effort and the helpful work which has been done for the industry as a whole, and asks that the program be strengthened and continued. The council recognizes and endorses the actions which have been taken to date for improving the Perishable Agricultural Commodities Act.

Therefore, we wish to go on record as approving S. 1037, proposed by Senator Holland, of Florida, and support it in every respect.

Senator HOLLAND. Thank you very much.

Are there other witnesses who wish to be heard?

The hearing will be adjourned, and if there are any communications prior to the receipt of the proofs, why, let me see them and they will be admitted without question.

(Whereupon, at 12:05 p.m., the committee adjourned subject to the call of the Chair.)

(Additional statements filed for the record are as follows:)

STATEMENT FILED BY LAWRENCE S. MARTIN, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF FROZEN FOOD PACKERS

Mr. Chairman and members of the committee, the undersigned, Lawrence S. Martin, executive vice president of the National Association of Frozen Food Packers, is grateful for the opportunity to make this statement in behalf of the association in connection with the proposal now before your committee to amend the Perishable Agricultural Commodities Act.

The National Association of Frozen Food Packers is a wholly independent, voluntary, nonprofit association organized for the purpose of promoting and protecting the interests of the American frozen food industry. Its members account

for substantially 85 percent of all frozen fruit and vegetable production in this country. Their packing plants are located throughout the United States, and are engaged in processing, selling, and shipping frozen food with distribution nationwide. Total frozen food production is now well in excess of 6 billion pounds annually, with a retail value of approximately \$4 billion.

While the Perishable Agricultural Commodities Act procedure has not been used by our industry to an extent comparable to that in produce distribution, nevertheless, it has been useful in orderly marketing of frozen fruits and vegetables.

Frozen foodpackers like the contents of the PAC Act and recognize the increased costs in its administration. Strengthening the act with respect to violations, likewise, is desirable.

This association is in favor of bill S. 1037 as it has been presented and supports and urges its passage in this form.

Thank you very much for giving consideration to this statement of the position of the National Association of Frozen Food Packers.

STATEMENT FILED BY PAUL L. COURTNEY, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF WHOLESALERS

The National Association of Wholesalers is a federation of 32 national commodity line wholesale associations. Several of our affiliated national groups distribute food and food products to the Nation's independent food retailers. The welfare of these retailers, our customers, is of vital concern to us, their supplying wholesalers.

The pending bill, S. 1037, authorizing an increase in the annual license fee under the Perishable Agricultural Commodities Act from \$25 to \$50 is therefore of great concern to us. If we correctly understand the original intent of the Perishable Agricultural Commodities Act, it was designed to protect growers, shippers, and terminal receivers of fruits, vegetables, and frozen foods against unwarranted rejections of shipments and consequent failure to complete contract payments.

We do not quarrel with this objective. We do not believe, however, that the relationship between local food retailers and their local wholesale suppliers requires any Federal regulation or enforcement machinery whatsoever to prevent unwarranted rejections of shipments or enforcement of contracts. The day-to-day supplier-customer relationship that exists between local fresh fruit, vegetable, frozen food wholesalers and their retail customers is, for all practical purposes, an arm's-length series of transactions. If the customer is not satisfied with the supplier's products, he switches to another supplier. If the supplier is not satisfied with the promptness of payment of the customer, he ceases to solicit his business. No third-party arbitrator is necessary to the relationship, by the furthest stretch of the imagination to insure "performance of contracts" or "unwarranted rejections of deliveries."

The Nation's fresh fruit, vegetable, and frozen food wholesalers are willing to continue to be covered by the law, and even to pay the proposed increased license fee if in the judgment of the committee this is necessary. We do feel very strongly, however, that our local independent retail customers should be exempt from the law provided they purchase a substantial portion of their fresh fruits, vegetables, and frozen food stocks from wholesalers.

The proposal of the National Association of Retail Grocers of the United States, as set forth in the statement of their general counsel, Mr. Henry Bison, Jr., to your committee would seem to us to be a reasonable solution to the problem. If 90 percent or more of a retailer's purchases of fresh fruit, vegetables, and frozen foods are made from licensed wholesalers of these commodities, such retailer should be exempt from the license provisions of the law. If a retailer, or retail enterprise, purchases direct from growers, shippers or terminal receivers, 10 percent or more of its fresh fruits, vegetables, or frozen foods, such retailer should be subject to the licensing provisions of the law.

We strongly recommend that your committee therefore amend the pending bill on page 2, after line 4, by adding the following language:

"(11) No person buying any perishable agricultural commodity solely for sale at retail shall be considered as a 'dealer' in respect to any such commodity in any calendar year: *Provided*, That not less than 90 per centum of his purchases of such commodity in such year are from one or more licensed wholesale

suppliers. For the purpose of this subsection, the amount of such purchases shall be determined on the basis of net invoice cost to the retailer."

We can see no justification for inclusion of local retailers under the license provisions of this act except revenue requirements. Since local retailers purchasing 90 percent or more of their requirements from local wholesale suppliers in no way benefit from the inspection procedure, we cannot understand why they should be taxed, through license fees, to support that procedure.

If existing license revenues are inadequate to support the desired inspection procedures, we would suggest increasing the license fees to those who directly benefit. If nonbeneficiaries are to be taxed to support the program, why not all nonbeneficiaries? Why not support the entire procedure for inspection and contract enforcement out of general revenue funds through an increase in the U.S. Department of Agriculture appropriation?

Your serious consideration of the proposed amendment of the bill is respectfully requested.

STATEMENT FILED BY HAROLD O. SMITH, JR., EXECUTIVE VICE PRESIDENT, UNITED STATES WHOLESALE GROCERS' ASSOCIATION

The United States Wholesale Grocers' Association, Inc., is the professional trade organization of wholesale grocers who supply approximately 125,000 independent supermarkets and food stores as well as institutional accounts throughout a large part of the United States. Many of our member firms sponsor retail voluntary groups totaling more than 9,000 affiliated independent retailers.

The retail customers of our wholesale firms for the most part either buy their fresh and frozen produce through our wholesalers or through produce wholesalers and frozen food wholesalers.

The pending bill, S. 1037, authorizing an increase in the annual license fee under the Perishable Agricultural Commodities Act from \$25 to \$50, is therefore of great concern to us. It is our understanding that the intent of the Perishable Agricultural Commodities Act is to protect growers, shippers, and terminal receivers of fruits, vegetables, and frozen foods against unwarranted rejections of shipments and consequent failure to complete contract payments.

We do not believe that any useful purpose would be served by requiring such licensing of a retailer who looks to the wholesaler as his supplier of fresh and frozen fruits and vegetables and who does not make it a practice to buy direct from the growers or shippers. We feel certain that our wholesalers do not find it necessary that the Federal Government step in as a mediator to protect the wholesaler against unwarranted rejections of shipments and consequent failure to complete contract payments.

Requirement of an annual license fee whether \$25 or \$50 places an unnecessary burden on the local retailer except those retailers who deal directly with growers and shippers and do not receive the major part of their fresh and frozen perishables through a wholesale supplier.

We strongly recommend that your committee adopt the recommendations you received from the National Association of Retail Grocers of the United States, as set forth in the statement of their general counsel, Mr. Henry Bison, Jr.—"If 90 percent or more of a retailer's purchases of fresh fruit, vegetables, and frozen foods are made from licensed wholesalers of these commodities, such retailer should be exempt from the license provisions of the law. If a retailer, or retail enterprise, purchases direct from growers, shippers, or terminal receivers, 10 percent or more of its fresh fruits, vegetables, or frozen foods, such retailer should be subject to the licensing provisions of the law."

Your favorable consideration of this proposed amendment to the bill is respectfully requested.

DETROIT, MICH., August 4, 1961.

PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: We note that a Senate Agriculture Subcommittee will hold hearings the week of August 7 on S. 1037, the bill permitting a raise of the license fee under PACA to \$50.

We feel that the Perishable Agricultural Commodities Act is basically a good law but we believe it is unfair to charge independent food brokers who represent food processors the license fee which is now \$25 and which is to be raised to \$50.

As you well know, food brokers are independent agents who are operating their own sales business and represent various noncompeting manufacturers and processors.

Since we are independent contractors, and since we have absolutely nothing to do with the processing of produce, we are hopeful that you will contact the members of this subcommittee considering bill S. 1037 and ask them to clearly exclude independent contractor sales agents from having to pay this license fee.

Thank you very much.

Most sincerely,

THE ROBERT BODEMER Co.,
TED SAHAKIAN.

MANCHESTER, N.H., August 4, 1961.

Senator STYLES BRIDGES,
Senate Office Building,
Washington, D.C.

DEAR STYLES: I'm at a loss—confused.

The farmers all over the country, through USDA folders, special leaflets and fliers, etc., keep urging retail grocers to push fresh produce.

For the past 10 years, special marketing experts have worked directly in stores showing grocers how to increase the sale of produce.

This association in New Hampshire has gone far out of its way to help stress the sale of New Hampshire produce, eggs, chickens, etc.

There is a Federal law called the Perishable Agricultural Commodities Act which says that stores must buy a \$25 license if they sell a ton of produce on 20 different days in a year. That's peanuts—even twenty 100-pound bags of potatoes is a ton.

Now the USDA wants to raise the license fee to \$50.

The question: The grocer borrows \$50 to buy produce from a farmer who grows produce. When he sells the produce the grocer pays \$50 to the Government to replace the \$50 it paid another farmer for not growing produce.

Anyway, Styles, a Senate subcommittee will hold a hearing on S. 1037 (raising the license fee) on August 8. Senator Johnston of South Carolina is chairman.

Yours very truly,

JAMES L. MAHONY,
Executive Director-Treasurer,
New Hampshire Retail Grocers Association, Inc.







LEGISLATIVE HISTORY

Public Law 87-725
S. 1037

TABLE OF CONTENTS

Index and summary of S. 1037	.1
Digest of Public Law 87-725.	.2

INDEX AND SUMMARY OF S. 1037

Feb. 22, 1961	Sen. Holland introduced S. 1037 which was referred to the Senate Agriculture and Forestry Committee. Print of bill as introduced.
Feb. 28, 1961	Rep. McIntire introduced H. R. 5023 which was referred to the House Agriculture Committee. Print of bill as introduced.
May 15, 1961	Rep. Matthews introduced H. R. 7060 which was referred to the House Agriculture Committee. Print of bill as introduced.
Aug. 15, 1961	Senate subcommittee voted to report S. 1037.
Aug. 16, 1961	Senate committee reported S. 1037 with amendments. S. Report No. 750. Print of bill and report.
Aug. 21, 1961	House subcommittee voted to report H. R. 5023.
Sept. 1, 1961	Senate passed S. 1037 with amendments.
Sept. 5, 1961	S. 1037 was referred to the House Agriculture Committee. Print of bill as referred.
Feb. 26, 1962	Rep. Cooley introduced H. R. 10373 which was referred to the House Agriculture Committee. Print of bill as introduced.
Mar. 2, 1962	House subcommittee instructed that a clean bill be introduced in lieu of H. R. 5023.
Mar. 19, 1962	House subcommittee voted to report S. 1037.
Mar. 22, 1962	House committee voted to report (but did not actually report) with amendments S. 1037.
Mar. 29, 1962	House committee reported S. 1037 with amendments. H. Report No. 1546. Print of bill and report.
Apr. 2, 1962	House passed S. 1037 under suspension of the rules.
Sept. 10, 1962	Senate conferees were appointed on S. 1037.
Sept. 11, 1962	House conferees were appointed on S. 1037.
Sept. 14, 1962	Conferees agreed to file a report on S. 1037.

Sept. 18, 1962 House received the conference report on S. 1037.
H. Report No. 2408. Print of report.

Sept. 21, 1962 Both Houses agreed to the conference report.

Oct. 1, 1962 Approved: Public Law 87-725.

AMENDMENT OF PERISHABLE AGRICULTURAL COMMODITIES ACT.

Amends the provisions of the Perishable Agricultural Commodities Act of 1930, relating to practices in the marketing of perishable agricultural commodities. Clarifies the provisions relating to relicensing or employment of persons who have violated the Act or have been affiliated with such persons; provides that an oral yearling need not be held when the amount claimed as damages in a reparation complaint does not exceed the sum of \$1,500; provides authority for the Secretary to increase the annual license fee to a maximum of \$50 if necessary to meet the expenses for administering this Act and the so-called Produce Agency Act; and provides that PACA license fees will not be used to finance the cost of administering the Export Apple and Pear Act and authorizes appropriations for this purpose.

87TH CONGRESS
1ST SESSION

S. 1037

IN THE SENATE OF THE UNITED STATES

FEBRUARY 22, 1961

Mr. HOLLAND introduced the following bill; which was read twice and referred to the Committee on Agriculture and Forestry

A BILL

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That the first section of the Perishable Agricultural Com-
4 modities Act, 1930 (7 U.S.C. 499a), is amended by adding
5 at the end thereof the following new paragraphs:

6 “(9) The term ‘responsibly connected’ means affiliated
7 or connected with a commission merchant, dealer, or broker
8 as (A) partner in a partnership, or (B) officer, director,
9 or holder of more than 10 per centum of the outstanding
10 stock of a corporation or association;

1 “(10) The terms ‘employ’ and ‘employment’ mean
2 any affiliation of any person with the business operations
3 of a licensee, with or without compensation, including
4 ownership or self-employment.”

5 SEC. 2. The third sentence of section 3 (b) of such Act
6 (7 U.S.C. 499c (b)) is amended to read as follows: “Upon
7 the filing of the application, and annually thereafter, the
8 applicant shall pay such fee as the Secretary determines
9 necessary to meet the reasonably anticipated expenses for
10 administering this Act and the Act to prevent the destruc-
11 tion or dumping of farm produce, approved March 3, 1927
12 (7 U.S.C. 491–497), but in no event shall such fee exceed
13 \$50. Such fee, when collected, shall be deposited in the
14 Treasury of the United States as a special fund, without fiscal
15 year limitation, to be designated as the ‘Perishable Agri-
16 cultural Commodities Act Fund’, which shall be available for
17 all expenses necessary to the administration of this Act and
18 the Act approved March 3, 1927, referred to above: *Pro-*
19 *vided*, That financial statements prescribed by the Director
20 of the Bureau of the Budget for the last completed fiscal
21 year, and as estimated for the current and ensuing fiscal
22 years, shall be included in the budget as submitted to the
23 Congress annually. The Secretary shall give public notice
24 of any increase to be made in the annual fee prescribed
25 by him hereunder and shall allow a reasonable time prior

1 to the effective date of such increase for interested persons
2 to file their views on or objections to such increase.”

3 SEC. 3. Section 3 of such Act (7 U.S.C. 499c) is fur-
4 ther amended by adding at the end thereof the following new
5 subsection:

6 “(c) A licensee may conduct business in more than one
7 trade name or change the name under which business is con-
8 ducted without requiring an additional or new license. The
9 Secretary may disapprove the use of a trade name if, in his
10 opinion, the use of the trade name by the licensee would be
11 deceptive, misleading, or confusing to the trade, and the Sec-
12 retary may, after notice and opportunity for a hearing, sus-
13 pend for a period not to exceed ninety days the license of
14 any licensee who continues to use a trade name which the
15 Secretary has disapproved for use by such licensee. The
16 Secretary may refuse to issue a license to an applicant if he
17 finds that the trade name in which the applicant proposes to
18 do business would be deceptive, misleading, or confusing to
19 the trade if used by such applicant.”

20 SEC. 4. Section 4 (a) of such Act (7 U.S.C. 499d (a))
21 is amended by inserting before the period at the end thereof
22 “: *And provided further*, That the license of any licensee
23 shall terminate upon said licensee, or in case the licensee is a
24 partnership, any partner, being discharged as a bankrupt”.

1 SEC. 5. Section 4 (b) of such Act (7 U.S.C. 499d (b))
2 is amended to read as follows:

3 “(b) The Secretary shall refuse to issue a license to
4 an applicant if he finds that the applicant, or any person
5 responsibly connected with the applicant, is a person who, or
6 is or was responsibly connected with a person who—

7 “(A) has had his license revoked under the provi-
8 sions of section 8 within two years prior to the date of
9 the application or whose license is currently under sus-
10 pension;

11 “(B) within two years prior to the date of appli-
12 cation has been found after notice and hearing to have
13 committed any flagrant or repeated violation of section
14 2, but this provision shall not apply to any case in which
15 the license of the person found to have committed such
16 violation was suspended and the suspension period has
17 expired or is not in effect;

18 “(C) within two years prior to the date of the ap-
19 plication, has been found guilty in a Federal court of
20 having violated the provisions of the Act of March 3,
21 1927 (7 U.S.C. 491–497), relating to the prevention
22 of destruction and dumping of farm produce; or

23 “(D) has failed, except in the case of bankruptcy
24 and subject to his right of appeal under section 7 (c),

1 to pay any reparation order issued against him within
2 two years prior to the date of the application.”

3 SEC. 6. Section 4 (c) of such Act (7 U.S.C. 499d (c))
4 is amended to read as follows:

5 “(c) Any applicant ineligible for a license by reason of
6 the provisions of subsection (b) of this section may, upon
7 the expiration of the two-year period applicable to him, be
8 issued a license by the Secretary if such applicant furnishes
9 a surety bond in the form and amount satisfactory to the
10 Secretary as assurance that his business will be conducted in
11 accordance with this Act and that he will pay all reparation
12 orders which may be issued against him in connection with
13 transactions occurring within four years following the
14 issuance of the license, subject to his right of appeal under
15 section 7 (c). In the event such applicant does not furnish
16 such a surety bond, the Secretary shall not issue a license to
17 him until three years have elapsed after the date of the
18 applicable order of the Secretary or decision of the court on
19 appeal. If the surety bond so furnished is terminated for any
20 reason without the approval of the Secretary the license
21 shall be automatically canceled as of the date of such termina-
22 tion and no new license shall be issued to such person during
23 the four-year period without a new surety bond covering the

1 remainder of such period. The Secretary, based on changes
2 in the nature and volume of business conducted by a bonded
3 licensee, may require an increase or authorize a reduction in
4 the amount of the bond. A bonded licensee who is notified
5 by the Secretary to provide a bond in an increased amount
6 shall do so within a reasonable time to be specified by the
7 Secretary, and upon failure of the licensee to provide such
8 bond his license shall be automatically suspended until such
9 bond is provided.”

10 SEC. 7. Subsections (c) and (d) of section 6 of such
11 Act (7 U.S.C. 499f) are amended by striking out “\$500”
12 each place it appears and inserting in lieu thereof “\$1,500”.

13 SEC. 8. Section 7 (c) of such Act (7 U.S.C. 499g (c))
14 is amended by striking the second sentence thereof and sub-
15 stituting therefor the following: “Such appeal shall be per-
16 fected by the filing with the clerk of said court a notice of
17 appeal, together with a petition in duplicate which shall
18 recite prior proceedings before the Secretary and shall state
19 the grounds upon which petitioner relies to defeat the right
20 of the adverse party to recover the damages claimed, with
21 proof of service thereof upon the adverse party. Such appeal
22 shall not be effective unless within thirty days from and after
23 the date of the reparation order the appellant also files with
24 the clerk a bond in double the amount of the reparation
25 awarded against the appellant conditioned upon the pay-

1 ment of the judgment entered by the court, plus interest and
2 costs, including a reasonable attorney's fee for the appellee,
3 if the appellee shall prevail. Such bond shall be in the form
4 of cash, negotiable securities having a market value at least
5 equivalent to the amount of bond prescribed, or the under-
6 taking of a surety company on the approved list of sureties
7 issued by the Treasury Department of the United States."

8 SEC. 9. Section 7 (d) of such Act (7 U.S.C. 499g (d))
9 is amended by striking the proviso at the end of the section
10 and substituting therefor the following: "*Provided*, That if
11 on the appeal the appellee prevails or if the appeal is dis-
12 missed the automatic suspension of license shall become effec-
13 tive at the expiration of thirty days from the date of the
14 judgment on the appeal, but if the judgment is stayed by a
15 court of competent jurisdiction the suspension shall become
16 effective ten days after the expiration of such stay, unless
17 prior thereto the judgment of the court has been satisfied."

18 SEC. 10. Section 8 (b) of such Act (7 U.S.C. 499h (b))
19 is amended to read as follows:

20 "(b) Except with the approval of the Secretary, no li-
21 censee shall employ any person, or any person who is or has
22 been responsibly connected with any person—

23 "(1) whose license has been revoked or is currently
24 suspended by order of the Secretary;

25 "(2) who has been found after notice and oppor-

1 tunity for hearing to have committed any flagrant or re-
2 peated violation of section 2, but this provision shall not
3 apply to any case in which the license of the person
4 found to have committed such violation was suspended
5 and the suspension period has expired or is not in effect;
6 or

7 “(3) against whom there is an unpaid reparation
8 award issued within two years, subject to his right of
9 appeal under section 7 (c) .

10 The Secretary may approve such employment at any time
11 following nonpayment of a reparation award, or after one
12 year following the revocation or finding of flagrant or
13 repeated violation of section 2, if the licensee furnishes and
14 maintains a surety bond in form and amount satisfactory to
15 the Secretary as assurance that such licensee’s business will
16 be conducted in accordance with this Act and that the
17 licensee will pay all reparation awards, subject to its right
18 of appeal under section 7 (c) , which may be issued against
19 it in connection with transactions occurring within four years
20 following the approval. The Secretary may approve em-
21 ployment without a surety bond after the expiration of two
22 years from the effective date of the applicable disciplinary
23 order. The Secretary, based on changes in the nature and
24 volume of business conducted by the licensee, may require
25 an increase or authorize a reduction in the amount of the

1 bond. A licensee who is notified by the Secretary to provide
2 a bond in an increased amount shall do so within a reason-
3 able time to be specified by the Secretary, and if the li-
4 censee fails to do so the approval of employment shall auto-
5 matically terminate. The Secretary may, after thirty days'
6 notice and an opportunity for a hearing, suspend or revoke
7 the license of any licensee who, after the date given in such
8 notice, continues to employ any person in violation of this
9 section."

10 SEC. 11. The Act of June 10, 1933 (48 Stat. 123; 7
11 U.S.C. 581-589), popularly known as the Export Apple
12 and Pear Act, is amended by adding at the end thereof a
13 new section as follows:

14 "SEC. 10. There are hereby authorized to be appropri-
15 ated such sums as may be necessary for the administration
16 of this Act."

A BILL

To amend the provisions of the Perishable
Agricultural Commodities Act, 1930, relat-
ing to practices in the marketing of perish-
able agricultural commodities.

By Mr. HOLLAND

FEBRUARY 22, 1961

Read twice and referred to the Committee on
Agriculture and Forestry

87TH CONGRESS
1ST SESSION

H. R. 5023

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1961

Mr. McINTIRE introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That the first section of the Perishable Agricultural Act,
4 1930 (7 U.S.C. 499a), is amended by adding at the end
5 thereof the following new paragraphs:

6 “(9) The term ‘responsibly connected’ means affiliated
7 or connected with a commission merchant, dealer, or broker
8 as (A) partner in a partnership, or (B) officer, director,
9 or holder of more than 10 per centum of the outstanding
10 stock of a corporation or association;

1 “(10) The terms ‘employ’ and ‘employment’ mean any
2 affiliation of any person with the business operations of a
3 licensee, with or without compensation, including owner-
4 ship or self-employment.”

5 SEC. 2. The third sentence of section 3 (b) of such Act
6 (7 U.S.C. 499c (b)) is amended to read as follows: “Upon
7 the filing of the application, and annually thereafter, the
8 applicant shall pay such fee as the Secretary determines
9 necessary to meet the reasonably anticipated expenses for
10 administering this Act and the Act to prevent the destruc-
11 tion or dumping of farm produce, approved March 3, 1927
12 (7 U.S.C. 491-497), but in no event shall such fee exceed
13 \$50. Such fee, when collected, shall be deposited in the
14 Treasury of the United States as a special fund, without
15 fiscal year limitation, to be designated as the ‘Perishable
16 Agricultural Commodities Act Fund’, which shall be avail-
17 able for all expenses necessary to the administration of this
18 Act and the Act approved March 3, 1927, referred to above:
19 *Provided*, That financial statements prescribed by the Di-
20 rector of the Bureau of the Budget for the last completed
21 fiscal year, and as estimated for the current and ensuing
22 fiscal years, shall be included in the budget as submitted to
23 the Congress annually. The Secretary shall give public
24 notice of any increase to be made in the annual fee prescribed
25 by him hereunder and shall allow a reasonable time prior

1 to the effective date of such increase for interested persons
2 to file their views on or objections to such increase.”

3 SEC. 3. Section 3 of such Act (7 U.S.C. 499c) is fur-
4 ther amended by adding at the end thereof the following
5 new subsection:

6 “(c) A licensee may conduct business in more than
7 one trade name or change the name under which business
8 is conducted without requiring an additional or new license.
9 The Secretary may disapprove the use of a trade name if,
10 in his opinion, the use of the trade name by the licensee
11 would be deceptive, misleading, or confusing to the trade,
12 and the Secretary may, after notice and opportunity for a
13 hearing, suspend for a period not to exceed ninety days the
14 license of any licensee who continues to use a trade name
15 which the Secretary has disapproved for use by such licensee.
16 The Secretary may refuse to issue a license to an applicant
17 if he finds that the trade name in which the applicant pro-
18 poses to do business would be deceptive, misleading, or
19 confusing to the trade if used by such applicant.”

20 SEC. 4. Section 4 (a) of such Act (7 U.S.C. 499d (a))
21 is amended by inserting before the period at the end thereof
22 “: *And provided further*, That the license of any licensee
23 shall terminate upon said licensee, or in case the licensee
24 is a partnership, any partner, being discharged as a bank-
25 rupt”.

1 SEC. 5. Section 4 (b) of such Act (7 U.S.C. 499d (b))
2 is amended to read as follows:

3 “(b) The Secretary shall refuse to issue a license to
4 an applicant if he finds that the applicant, or any person
5 responsibly connected with the applicant, is a person who,
6 or is or was responsibly connected with a person who—

7 “(A) has had his license revoked under the pro-
8 visions of section 8 within two years prior to the date
9 of the application or whose license is currently under
10 suspension;

11 “(B) within two years prior to the date of appli-
12 cation has been found after notice and hearing to have
13 committed any flagrant or repeated violation of section
14 2, but this provision shall not apply to any case in which
15 the license of the person found to have committed such
16 violation was suspended and the suspension period has
17 expired or is not in effect;

18 “(C) within two years prior to the date of the
19 application, has been found guilty in a Federal court
20 of having violated the provisions of the Act of March 3,
21 1927 (7 U.S.C. 491–497), relating to the prevention
22 of destruction and dumping of farm produce; or

23 “(D) has failed, except in the case of bankruptcy
24 and subject to his right of appeal under section 7 (c),

1 to pay any reparation order issued against him within
2 two years prior to the date of the application.”

3 SEC. 6. Section 4 (c) of such Act (7 U.S.C. 499d (c))
4 is amended to read as follows:

5 “(c) Any applicant ineligible for a license by reason
6 of the provisions of subsection (b) of this section may, upon
7 the expiration of the two-year period applicable to him, be
8 issued a license by the Secretary if such applicant furnishes
9 a surety bond in the form and amount satisfactory to the
10 Secretary as assurance that his business will be conducted
11 in accordance with this Act and that he will pay all repara-
12 tion orders which may be issued against him in connection
13 with transactions occurring within four years following the is-
14 suance of the license, subject to his right of appeal under sec-
15 tion 7 (c). In the event such applicant does not furnish such
16 a surety bond, the Secretary shall not issue a license to him
17 until three years have elapsed after the date of the applicable
18 order of the Secretary or decision of the court on appeal. If
19 the surety bond so furnished is terminated for any reason
20 without the approval of the Secretary the license shall be
21 automatically canceled as of the date of such termination
22 and no new license shall be issued to such person during the
23 four-year period without a new surety bond covering the re-

1 mainder of such period. The Secretary, based on changes in
2 the nature and volume of business conducted by a bonded
3 licensee, may require an increase or authorize a reduction
4 in the amount of the bond. A bonded licensee who is noti-
5 fied by the Secretary to provide a bond in an increased
6 amount shall do so within a reasonable time to be specified
7 by the Secretary, and upon failure of the licensee to provide
8 such bond his license shall be automatically suspended until
9 such bond is provided.”

10 SEC. 7. Subsections (c) and (d) of section 6 of such
11 Act (7 U.S.C. 499f) are amended by striking out “\$500”
12 each place it appears and inserting in lieu thereof “\$1,500”.

13 SEC. 8. Section 7 (c) of such Act (7 U.S.C. 499g (c))
14 is amended by striking the second sentence thereof and sub-
15 stituting therefor the following: “Such appeal shall be per-
16 fected by the filing with the clerk of said court a notice of
17 appeal, together with a petition in duplicate which shall recite
18 prior proceedings before the Secretary and shall state the
19 grounds upon which petitioner relies to defeat the right of
20 the adverse party to recover the damages claimed, with proof
21 of service thereof upon the adverse party. Such appeal
22 shall not be effective unless within thirty days from and after
23 the date of the reparation order the appellant also files with
24 the clerk a bond in double the amount of the reparation
25 awarded against the appellant conditioned upon the payment

1 of the judgment entered by the court, plus interest and costs,
2 including a reasonable attorney's fee for the appellee, if the
3 appellee shall prevail. Such bond shall be in the form of
4 cash, negotiable securities having a market value at least
5 equivalent to the amount of bond prescribed, or the undertak-
6 ing of a surety company on the approved list of sureties is-
7 sued by the Treasury Department of the United States."

8 SEC. 9. Section 7 (d) of such Act (7 U.S.C. 499g (d))
9 is amended by striking the proviso at the end of the section
10 and substituting therefor the following: "*Provided*, That if
11 on the appeal the appellee prevails or if the appeal is dis-
12 missed the automatic suspension of license shall become ef-
13 fective at the expiration of thirty days from the date of the
14 judgment on the appeal, but if the judgment is stayed by a
15 court of competent jurisdiction the suspension shall become
16 effective ten days after the expiration of such stay, unless
17 prior thereto the judgment of the court has been satisfied."

18 SEC. 10. Section 8 (b) of such Act (7 U.S.C. 499h
19 (b)) is amended to read as follows:

20 "(b) Except with the approval of the Secretary, no
21 licensee shall employ any person who is or has been responsi-
22 bly connected with any person—

23 "(1) whose license has been revoked or is cur-
24 rently suspended by order of the Secretary;

25 "(2) who has been found after notice and oppor-

1 tunity for hearing to have committed any flagrant or
2 repeated violation of section 2, but this provision shall
3 not apply to any case in which the license of the person
4 found to have committed such violation was suspended
5 and the suspension period has expired or is not in effect;
6 or

7 “(3) against whom there is an unpaid reparation
8 award issued within two years, subject to his right of
9 appeal under section 7 (c) .

10 The Secretary may approve such employment at any time
11 following nonpayment of a reparation award, or after one
12 year following the revocation or finding of flagrant or re-
13 peated violation of section 2, if the licensee furnishes and
14 maintains a surety bond in form and amount satisfactory to
15 the Secretary as assurance that such licensee’s business will
16 be conducted in accordance with this Act and that the
17 licensee shall pay all reparation awards, subject to its right
18 of appeal under section 7 (c) , which may be issued against
19 it in connection with transactions occurring within four
20 years following the approval. The Secretary may approve
21 employment without a surety bond after the expiration of
22 two years from the effective date of the applicable discipli-
23 nary order. The Secretary, based on changes in the nature
24 and volume of business conducted by the licensee, may
25 require an increase or authorize a reduction in the amount

1 of the bond. A licensee who is notified by the Secretary
2 to provide a bond in an increased amount shall do so within
3 a reasonable time to be specified by the Secretary, and if
4 the licensee fails to do so the approval of employment shall
5 automatically terminate. The Secretary may, after thirty
6 days' notice and an opportunity for a hearing, suspend or
7 revoke the license of any licensee who, after the date given
8 in such notice, continues to employ any person in violation
9 of this section."

10 SEC. 11. The Act of June 10, 1933 (48 State. 123; 7
11 U.S.C. 581-589), popularly known as the "Export Apple
12 and Pear Act", is amended by adding at the end thereof
13 a new section as follows:

14 "SEC. 10. There are hereby authorized to be appro-
15 priated such sums as may be necessary for the administra-
16 tion of this Act."

A BILL

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

By Mr. McIntire

FEBRUARY 28, 1961

Referred to the Committee on Agriculture

87TH CONGRESS
1ST SESSION

H. R. 7060

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 1961

Mr. MATTHEWS introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the first section of the Perishable Agricultural Act,
4 1930 (7 U.S.C. 499a), is amended by adding at the end
5 thereof the following new paragraphs:
6 “(9) The term ‘responsibly connected’ means affiliated
7 or connected with a commission merchant, dealer, or broker
8 as (A) partner in a partnership, or (B) officer, director,
9 or holder of more than 10 per centum of the outstanding
10 stock of a corporation or association;

1 “(10) The terms ‘employ’ and ‘employment’ mean any
2 affiliation of any person with the business operations of a
3 licensee, with or without compensation, including owner-
4 ship or self-employment.”

5 SEC. 2. The third sentence of section 3 (b) of such Act
6 (7 U.S.C. 499c (b)) is amended to read as follows: “Upon
7 the filing of the application, and annually thereafter, the
8 applicant shall pay such fee as the Secretary determines
9 necessary to meet the reasonably anticipated expenses for
10 administering this Act and the Act to prevent the destruc-
11 tion or dumping of farm produce, approved March 3, 1927
12 (7 U.S.C. 491-497), but in no event shall such fee exceed
13 \$50. Such fee, when collected, shall be deposited in the
14 Treasury of the United States as a special fund, without
15 fiscal year limitation, to be designated as the ‘Perishable
16 Agricultural Commodities Act Fund’, which shall be avail-
17 able for all expenses necessary to the administration of this
18 Act and the Act approved March 3, 1927, referred to above:
19 *Provided*, That financial statements prescribed by the Di-
20 rector of the Bureau of the Budget for the last completed
21 fiscal year, and as estimated for the current and ensuing
22 fiscal years, shall be included in the budget as submitted to
23 the Congress annually. The Secretary shall give public
24 notice of any increase to be made in the annual fee prescribed
25 by him hereunder and shall allow a reasonable time prior

1 to the effective date of such increase for interested persons
2 to file their views on or objections to such increase.”

3 SEC. 3. Section 3 of such Act (7 U.S.C. 499c) is fur-
4 ther amended by adding at the end thereof the following
5 new subsection:

6 “(c) A licensee may conduct business in more than
7 one trade name or change the name under which business
8 is conducted without requiring an additional or new license.
9 The Secretary may disapprove the use of a trade name if,
10 in his opinion, the use of the trade name by the licensee
11 would be deceptive, misleading, or confusing to the trade,
12 and the Secretary may, after notice and opportunity for a
13 hearing, suspend for a period not to exceed ninety days the
14 license of any licensee who continues to use a trade name
15 which the Secretary has disapproved for use by such licensee.
16 The Secretary may refuse to issue a license to an applicant
17 if he finds that the trade name in which the applicant pro-
18 poses to do business would be deceptive, misleading, or
19 confusing to the trade if used by such applicant.”

20 SEC. 4. Section 4 (a) of such Act (7 U.S.C. 499d (a))
21 is amended by inserting before the period at the end thereof
22 “: *And provided further*, That the license of any licensee
23 shall terminate upon said licensee, or in case the licensee
24 is a partnership, any partner, being discharged as a bank-
25 rupt”.

1 SEC. 5. Section 4 (b) of such Act (7 U.S.C. 499d (b))
2 is amended to read as follows:

3 “(b) The Secretary shall refuse to issue a license to
4 an applicant if he finds that the applicant, or any person
5 responsibly connected with the applicant, is a person who,
6 or is or was responsibly connected with a person who—

7 “(A) has had his license revoked under the pro-
8 visions of section 8 within two years prior to the date
9 of the application or whose license is currently under
10 suspension;

11 “(B) within two years prior to the date of appli-
12 cation has been found after notice and hearing to have
13 committed any flagrant or repeated violation of section
14 2, but this provision shall not apply to any case in which
15 the license of the person found to have committed such
16 violation was suspended and the suspension period has
17 expired or is not in effect;

18 “(C) within two years prior to the date of the
19 application, has been found guilty in a Federal court
20 of having violated the provisions of the Act of March 3,
21 1927 (7 U.S.C. 491–497), relating to the prevention
22 of destruction and dumping of farm produce; or

23 “(D) has failed, except in the case of bankruptcy
24 and subject to his right of appeal under section 7 (c),

1 to pay any reparation order issued against him within
2 two years prior to the date of the application.”

3 SEC. 6. Section 4 (c) of such Act (7 U.S.C. 499d (c))
4 is amended to read as follows:

5 “(c) Any applicant ineligible for a license by reason
6 of the provisions of subsection (b) of this section may, upon
7 the expiration of the two-year period applicable to him, be
8 issued a license by the Secretary if such applicant furnishes
9 a surety bond in the form and amount satisfactory to the
10 Secretary as assurance that his business will be conducted
11 in accordance with this Act and that he will pay all repara-
12 tion orders which may be issued against him in connection
13 with transactions occurring within four years following the is-
14 suance of the license, subject to his right of appeal under sec-
15 tion 7 (c) . In the event such applicant does not furnish such
16 a surety bond, the Secretary shall not issue a license to him
17 until three years have elapsed after the date of the applicable
18 order of the Secretary or decision of the court on appeal. If
19 the surety bond so furnished is terminated for any reason
20 without the approval of the Secretary the license shall be
21 automatically canceled as of the date of such termination
22 and no new license shall be issued to such person during the
23 four-year period without a new surety bond covering the re-

1 mainder of such period. The Secretary, based on changes in
2 the nature and volume of business conducted by a bonded
3 licensee, may require an increase or authorize a reduction
4 in the amount of the bond. A bonded licensee who is noti-
5 fied by the Secretary to provide a bond in an increased
6 amount shall do so within a reasonable time to be specified
7 by the Secretary, and upon failure of the licensee to provide
8 such bond his license shall be automatically suspended until
9 such bond is provided.”

10 SEC. 7. Subsections (c) and (d) of section 6 of such
11 Act (7 U.S.C. 499f) are amended by striking out “\$500”
12 each place it appears and inserting in lieu thereof “\$1,500”.

13 SEC. 8. Section 7 (c) of such Act (7 U.S.C. 499g (c))
14 is amended by striking the second sentence thereof and sub-
15 stituting therefor the following: “Such appeal shall be per-
16 fected by the filing with the clerk of said court a notice of
17 appeal, together with a petition in duplicate which shall recite
18 prior proceedings before the Secretary and shall state the
19 grounds upon which petitioner relies to defeat the right of
20 the adverse party to recover the damages claimed, with proof
21 of service thereof upon the adverse party. Such appeal
22 shall not be effective unless within thirty days from and after
23 the date of the reparation order the appellant also files with
24 the clerk a bond in double the amount of the reparation
25 awarded against the appellant conditioned upon the payment

1 of the judgment entered by the court, plus interest and costs,
2 including a reasonable attorney's fee for the appellee, if the
3 appellee shall prevail. Such bond shall be in the form of
4 cash, negotiable securities having a market value at least
5 equivalent to the amount of bond prescribed, or the undertak-
6 ing of a surety company on the approved list of sureties is-
7 sued by the Treasury Department of the United States."

8 SEC. 9. Section 7 (d) of such Act (7 U.S.C. 499g (d))
9 is amended by striking the proviso at the end of the section
10 and substituting therefor the following: "*Provided*, That if
11 on the appeal the appellee prevails or if the appeal is dis-
12 missed the automatic suspension of license shall become ef-
13 fective at the expiration of thirty days from the date of the
14 judgment on the appeal, but if the judgment is stayed by a
15 court of competent jurisdiction the suspension shall become
16 effective ten days after the expiration of such stay, unless
17 prior thereto the judgment of the court has been satisfied."

18 SEC. 10. Section 8 (b) of such Act (7 U.S.C. 499h
19 (b)) is amended to read as follows:

20 "(b) Except with the approval of the Secretary, no
21 licensee shall employ any person who is or has been responsi-
22 bly connected with any person—

23 "(1) whose license has been revoked or is cur-
24 rently suspended by order of the Secretary;

25 "(2) who has been found after notice and oppor-

1 tunity for hearing to have committed any flagrant or
2 repeated violation of section 2, but this provision shall
3 not apply to any case in which the license of the person
4 found to have committed such violation was suspended
5 and the suspension period has expired or is not in effect;
6 or

7 “(3) against whom there is an unpaid reparation
8 award issued within two years, subject to his right of
9 appeal under section 7 (c) .

10 The Secretary may approve such employment at any time
11 following nonpayment of a reparation award, or after one
12 year following the revocation or finding of flagrant or re-
13 peated violation of section 2, if the licensee furnishes and
14 maintains a surety bond in form and amount satisfactory to
15 the Secretary as assurance that such licensee's business will
16 be conducted in accordance with this Act and that the
17 licensee shall pay all reparation awards, subject to its right
18 of appeal under section 7 (c) , which may be issued against
19 it in connection with transactions occurring within four
20 years following the approval. The Secretary may approve
21 employment without a surety bond after the expiration of
22 two years from the effective date of the applicable discipli-
23 nary order. The Secretary, based on changes in the nature
24 and volume of business conducted by the licensee, may
25 require an increase or authorize a reduction in the amount

1 of the bond. A licensee who is notified by the Secretary
2 to provide a bond in an increased amount shall do so within
3 a reasonable time to be specified by the Secretary, and if
4 the licensee fails to do so the approval of employment shall
5 automatically terminate. The Secretary may, after thirty
6 days' notice and an opportunity for a hearing, suspend or
7 revoke the license of any licensee who, after the date given
8 in such notice, continues to employ any person in violation
9 of this section."

10 SEC. 11. The Act of June 10, 1933 (48 State. 123; 7
11 U.S.C. 581-589), popularly known as the "Export Apple
12 and Pear Act", is amended by adding at the end thereof
13 a new section as follows:

14 "SEC. 10. There are hereby authorized to be appro-
15 priated such sums as may be necessary for the administra-
16 tion of this Act."

87TH CONGRESS
1ST SESSION

H. R. 7060

A BILL

To amend the provisions of the Perishable
Agricultural Commodities Act, 1930, relat-
ing to practices in the marketing of perish-
able agricultural commodities.

By Mr. MATTHEWS

MAY 15, 1961

Referred to the Committee on Agriculture

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be quoted
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CONTENTS

Issued August 16, 1961
For actions of August 15, 1961
87th-1st, No. 140

Appropriations.....	1,32
Atomic energy.....	17
Botanic garden.....	6
Civil defense.....	4
Consumers.....	15
Development loans.....	10
Easements.....	7
Education.....	13,29
Foreign affairs.....	25
Foreign aid.....	2,10,19
Foreign trade.....	12,23
Forestry.....	16
4-H Clubs.....	20
Housing.....	27
Lands.....	22
Manpower.....	24
Monopolies.....	30
Ocean freight.....	30

Peanuts.....	8,26
Perishable commodities.....	8
Personal.....	33
Reclamation.....	28
Recreation.....	16
Reorganization.....	4
Saline water.....	3
Tobacco.....	9
Transportation.....	5
TVA rates.....	21
Water resources.....	18
Watersheds.....	11
Wool.....	14
Youth employment.....	31

HIGHLIGHTS: Senate debated foreign aid authorization bill. House debated foreign aid authorization bill. Senate subcommittee tentatively approved bill for transfer of tobacco acreage allotments. Both Houses agreed to conference report on Treasury-Post Office appropriation bill. House committee reported bill to extend saline water conversion program.

HOUSE

- 1. APPROPRIATIONS.** Both Houses agreed to the conference report on H. R. 5954, the Treasury-Post Office appropriation bill for 1962. This bill will now be sent to the President. pp. 14736-7, 14839-41
Rep. Laird inserted letters from the President and HEW Secretary Ribicoff in connection with his objection to sending H. R. 7035, the Labor-Health, Education, and Welfare appropriation bill, to conference. pp. 14800-2
- 2. FOREIGN AID.** Continued debate on H. R. 8400, the foreign aid authorization bill. pp. 14737-80, 14789-93, 14798-800
- 3. SALINE WATER.** The Interior and Insular Affairs Committee reported with amendments H. R. 7916, to expand and extend the saline water conversion program being conducted by the Secretary of the Interior (H. Rept. 908). p. 14803
- 4. CIVIL DEFENSE.** The Armed Services Committee reported without amendment H. R. 8383, to amend the Federal Civil Defense Act of 1950 to ratify retroactive financial contributions made to States (H. Rept. 924), and H. R. 8406, to change

the name of the Office of Civil and Defense Mobilization to the Office of Emergency Planning (H. Rept. 926). p. 14804

5. TRANSPORTATION The Merchant Marine and Fisheries Committee reported with amendment H. R. 6732, to amend the Merchant Marine Act, 1936, to encourage the construction and maintenance of American-flag vessels built in American shipyards (H. Rept. 922). p. 14804
6. BOTANIC GARDEN. The Agriculture Committee reported without amendment H. R. 5628, to provide for a study and investigation of the desirability and feasibility of establishing and maintaining a National Tropical Botanic Garden (H. Rept. 940). p. 14804
7. EASEMENTS. The Public Works Committee voted to report (but did not actually report) with amendments H. R. 8355, to authorize executive agencies to grant easements in, over, or upon real property of the U. S. under the control of such agencies. p. D713

SENATE

8. PERISHABLE COMMODITIES; PEANUTS. The Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices of the Agriculture Committee voted to report to the full committee S. 1037, with amendment, to amend the Perishable Agricultural Commodities Act regarding fees, oral hearings, and relicensing of persons under the Act, and H. R. 1021, to extend for 2 years the definition of peanuts which is now in effect under the Agricultural Adjustment Act of 1938 so as to exclude from acreage allotments and marketing quotas any peanuts produced and marketed for consumption as boiled peanuts. p. D709
9. TOBACCO. The "Daily Digest" states that the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices of the Agriculture Committee "gave tentative approval to H. R. 1022, providing for lease and transfer of tobacco acreage allotments." p. D709
10. FOREIGN AID. Continued debate on S. 1983, the foreign aid authorization bill (pp. 14819-36, 14839, 14841-54, 14859). By a vote of 63 to 34, agreed to an amendment by Sen. Hickenlooper, as modified by a substitute amendment by Sen. Dirksen, to provide that development loans in excess of \$5,000,000 may not be made unless thirty days earlier a full report on the proposed loan is made to the Committees on Foreign Relations and Foreign Affairs of the Senate and House and the Committees on Appropriations of both Houses, and to provide that any of these committees may report a concurrent resolution to disapprove any such proposed loan. The substitute amendment by Sen. Dirksen was agreed to earlier by a vote of 52 to 44. The Hickenlooper amendment would have required the President to submit to Congress annually a budget program for foreign aid to be approved by affirmative action of Congress. (pp. 14821-35) Rejected an amendment by Sen. Lausche to reduce the authorization for the development loan fund from \$1,187 million to \$900 million for fiscal year 1962 and from \$1,900 million to \$1,600 million for each of the next 4 fiscal years (pp. 14851-3).
11. WATERSHEDS. Received from the Budget Bureau plans for works of improvements on the following watersheds: p. 14807
Sarasota west coast, Fla., Little Satilla Creek, Ga., Davids Creek, Davis-Battle Creek, and Ryan-Henschal, Iowa, Silver Creek, Kans., East Fork of Pond River, Ky., Tallahalla Creek, Miss., Souhegan River, N. H. and Mass., Ahoskie Creek, N. C., Cane Creek, Okla., Dunlap Creek, Pa., and West Fork Kickapoo, Wisc.; to Agriculture and Forestry Committee.

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OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

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CONTENTS

Issued August 17, 1961
For actions of August 16, 1961
87th-1st, No. 141

ASC committees.....	12
Bids.....	13
Cotton imports.....	20
Development loans.....	3,9
Disaster relief.....	4
Education.....	7,10,19
Farm credit.....	1
Farm labor.....	6,17
Foreign aid.....	3,9,15
Foreign trade.....	8,22
Hog cholera.....	1
Income tax.....	23
Information.....	13
Peace Corps.....	16
Peanuts.....	1

Perishable commodities...	1
Personnel.....	12,18,21,23
Retirement.....	12,21
Tobacco.....	2
Training.....	12
USDA employment.....	18
Watersheds.....	5,14
Water compacts.....	11

HIGHLIGHTS: Senate committee reported bill to establish national hog cholera eradication program. Senate committee voted to report bill for lease and transfer of tobacco acreage allotments. Senate debated foreign aid authorization bill. House debated foreign aid authorization bill.

SENATE

1. THE AGRICULTURE AND FORESTRY COMMITTEE reported the following bills: p. 14871
~~S. 1908, without amendment, directing the Secretary of Agriculture to initiate a national hog cholera eradication program in cooperation with the States (S. Rept. 748).~~
S. 1037, with amendment, to amend the Perishable Agricultural Commodities Act regarding fees, oral hearings, and relicensing of persons under the Act (S. Rept 750).
H. R. 1021, without amendment, to extend for 2 years the definition of peanuts which is now in effect under the Agricultural Adjustment Act of 1938 so as to exclude from acreage allotments and marketing quotas any peanuts produced and marketed for consumption as boiled peanuts (S. Rept. 749).
S. 1927, with amendment, to clarify and simplify the lending operations of institutions regulated by the Farm Credit Administration (S. Rept. 747).
2. TOBACCO. The Agriculture and Forestry Committee voted to report (but did not actually report) with amendment H. R. 1022, to provide for the lease and transfer of tobacco acreage allotments. p. D716

3. FOREIGN AID. Continued debate on S. 1983, the foreign aid authorization bill (pp. 14895-935, 14937-40). By a vote of 51 to 43, agreed to an amendment by Sen. Ellender to reduce from \$1,900 million to \$1,700 million the authorization for development loans for each of the fiscal years 1963 through 1966 (pp. 14914-7). Agreed to a unanimous consent agreement providing that beginning Thurs., Aug. 17, further debate will be limited to 1 hour on any amendment and to 6 hours on final passage of the bill (p. 14934).

Sen. Humphrey submitted an amendment intended to be proposed to the bill to provide that in the administration of technical assistance, the Administrator shall "utilize to the fullest extent practicable, the facilities and resources of the Federal agency or agencies with primary responsibilities for domestic programs in such field." p. 14872

4. DISASTER RELIEF. The Public Works Committee reported without amendment S. 1742, to authorize Federal assistance to Guam, American Samoa, and the Trust Territory of the Pacific Islands in major disasters (S. Rept. 758). p. 14943

5. WATERSHEDS. The Agriculture and Forestry Committee approved the following watershed projects: Big Creek, Ark., Ulatis Creek, Calif., South Branch, Park River, Conn., Frog Creek, Kans., Humphrey-Clanton Creek, Ky., South Branch Cass River, Mich., Plum Creek, Nebr., Upper Red Rock Creek, Okla., and Houser Creek, Tenn. p. D716

6. FARM LABOR. Sen. Morse inserted resolutions adopted by the American Baptist Convention, including a resolution favoring Federal aid to improve conditions for migratory farm workers. pp. 14868-71

7. EDUCATION. Sen. McNamara submitted an amendment he intends to propose to provide for a 2-year extension of Federal assistance for schools in federally impacted areas. p. 14872

8. FOREIGN TRADE. Sen. Proxmire expressed concern over the "Soviet economic offensive," stated that the "Soviet trade challenge looms as a significant factor in the shaping of our foreign policy toward many sensitive areas of the world," and inserted several items relating to U. S. and Soviet trade with other nations. pp. 14880-92

HOUSE

9. FOREIGN AID. Continued debate on H. R. 8400, the foreign aid authorization bill (pp. 14945-15005). By a vote of 197 to 185, agreed to an amendment by Rep. Morgan, as modified by a substitute amendment by Rep. Saund, to strike out the provision authorizing development loans over a 5-year period to be financed by Treasury borrowings, and to authorize instead appropriations of \$1,200,000,000 for the fiscal year 1962 for development loans, to be available until expended (pp. 14991-15005).

10. EDUCATIONAL EXCHANGES. Rep. Hays discussed his bill H. R. 8666, to provide for educational and cultural exchanges, saying, "The proposals contained in this bill are a necessary first step toward improvement in a vital area of our international affairs." pp. 15005-6

11. WATER COMPACTS. The Interior and Insular Affairs Committee reported without amendment S. 2245, to extend the time for negotiation of certain compacts by the States of Nebraska, Wyoming, and South Dakota (H. Rept. 952). p. 15015

AMENDMENTS TO PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

AUGUST 16, 1961.—Ordered to be printed

Mr. HOLLAND, from the Committee on Agriculture and Forestry,
submitted the following

R E P O R T

[To accompany S. 1037]

The Committee on Agriculture and Forestry, to whom was referred the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, having considered the same, report thereon with a recommendation that it do pass with amendments.

HEARINGS

Hearings were conducted on the bill by the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices.

SHORT EXPLANATION

This bill, with the committee amendments, would amend the Perishable Agricultural Commodities Act to—

(1) Improve and clarify provisions dealing with the eligibility for license, or for employment by licensees, of persons guilty of specified acts and persons affiliated with them;

(2) Authorize increase of license fees from \$25 per year to such higher rate not above \$50 as may prove necessary, except that in the case of retail dealers the fee could not be increased above \$25;

(3) Eliminate the Export Apple and Pear Act from the acts administered with license fees received under the Perishable Agricultural Commodities Act; and authorize appropriations to carry out the Export Apple and Pear Act;

(4) Regulate the use of trade names by licensees to prevent deception;

(5) Provide that opportunity for an oral hearing need not be provided in reparation cases unless the amount in dispute exceeds \$1,500 (instead of \$500);

(6) Make it clear that in an appeal from a reparation order bond must be filed within 30 days after entry of the order and provide that the bond shall be in cash, negotiable securities, or the undertaking of a recognized surety company; and

(7) Defer license suspension in case of appeal until all judicial appeals have ended.

COMMITTEE AMENDMENTS

The committee amendments (1) limit the license fee for retail dealers to \$25 per year, and (2) make a technical correction in the grounds for license refusal, so as to provide the same treatment for applicants found guilty of flagrant violations without regard to whether they availed themselves of the opportunity for a hearing on such violations.

PURPOSE OF THE ACT BEING AMENDED

The purpose of the Perishable Agricultural Commodities Act is to suppress unfair and fraudulent practices in the marketing of fresh fruits and fresh vegetables, whether frozen or packed in ice, and including cherries in brine, in interstate or foreign commerce. It seeks to accomplish this by (1) requiring that commission merchants, dealers, and brokers subject to the act obtain from the Secretary a license for which they must pay an annual fee; (2) requiring that licensees keep such accounts and records as will show fully and correctly all transactions; (3) prohibiting fraudulent accounting, unjustifiable rejections or failures to deliver, and misbranding and other misrepresentations; and (4) authorizing the investigation of complaints, the issuance of reparation orders, the publication of facts concerning violations and the refusal, suspension, or revocation of licenses. The cost of administering the act, other than legal services, is borne out of license fees.

SECTION-BY-SECTION ANALYSIS

Section 1. Definitions

The first section of the bill adds to the first section of the Perishable Agricultural Commodities Act definitions of "responsibility connected" and "employ" or "employment." These new definitions are necessary by reason of the rewriting of the provisions relating to sections 4(b), 4(c), and 8(b) of the act. These terms, although heretofore used in the act, were not defined. Their definition will give them specific meaning, thus avoiding possible confusion as to interpretations. The defining of "employ" and "employment" to include ownership or self-employment makes it clear that the provisions of section 8(b), as amended, apply to owners, as well as others employed in the business. To fail to include owners would defeat the whole purpose of this provision of the act. Heretofore the phrase used in connection with section 8(b) was "employ in a responsible position" and considerable difficulty has been encountered in delineating what constituted a responsible position.

Section 2. License fees

Section 2 would delete the reference to the Export Apple and Pear Act in section 3(b) of the act so that the cost of administering this unrelated statutory program would not be charged against the Perishable Agricultural Commodities Act fund and will hereafter be financed through appropriated funds like unrelated programs of the Department. Authorization for appropriations to cover the cost of administering the Export Apple and Pear Act is contained in section 11 of the bill.

Section 2 also amends section 3(b) of the act to authorize the Secretary of Agriculture to fix license fees in such amount as he determines to be necessary to meet the reasonably anticipated expenses of administration of the Perishable Agricultural Commodities Act and the act of March 3, 1927 (the Produce Agency Act), not to exceed \$50 per year, and not to exceed \$25 per year in the case of a retail dealer. The present statutory maximum is \$25. In its report and in testimony on the bill, the Department pointed out that under the current \$25 fee administrative expenses have exceeded collections for the past 2 years, necessitating withdrawals from the limited reserve fund which has been built up over a period of years. The Department advises further that failure to provide an increase in license fees will result in a sharp curtailment of enforcement operations. While current costs will necessitate increasing the fee to approximately \$35, provision is made for further increases to a maximum fee of \$50 if increases in operating costs occur in the future. Some concern has been expressed that the \$50 maximum fee will immediately become the current fee. In approving the increase in the maximum license fee from \$25 to \$50 per year, it is the committee's understanding that only a portion of such increase is needed to meet current operating expenses. Therefore, it will not be necessary for the Department to increase the fee to the authorized maximum of \$50 immediately following the enactment of this bill but, instead, it will establish a fee of about \$35 per year. Future increases should also be determined by the level of revenue in relation to the administrative costs. Sound and effective administration should not be sacrificed but increments in the fees should be carefully weighed to avoid any unnecessary expense on the part of the industry. The bill provides that the Secretary must give public notice and an opportunity for interested persons to file their views on or objections to any proposed increase prior to the effective date of such increase.

The National Association of Retail Grocers of the United States suggested that additional retail dealers be exempted from the provisions of the act, particularly in view of the proposed increase in license fees. At present any retailer is exempt from the act until his purchases of the commodity in carloads in any year are in excess of 20. The term "in carloads" is defined to include wholesale or jobbing quantities as defined for the commodity by the Secretary. Under the Secretary's regulations any retailer who purchases in excess of a ton of perishable commodities on each of 21 days is required to obtain a license. The Department advises that this formula exempts over 95 percent of all single unit retail stores, and the remaining 2 or 3 percent are virtually all supermarkets purchasing over \$50,000 a year of fresh and frozen fruits and vegetables. The committee felt that any further exemption of retail dealers might impair the effective-

tiveness of the act by depriving the Secretary of access to necessary records and jurisdiction over an important part of the marketing system. However, the committee felt that license fees for retail dealers should not be increased above \$25 per year and has recommended an amendment to that effect.

The equity of requiring payment of the same annual fee by each licensee, regardless of his size of business or number of outlets, was questioned by some of the industry representatives. The committee requests the Secretary of Agriculture to investigate the feasibility of variable or supplemental fee rates. In making such investigation, due regard should be given to the administrative problems involved as well as to the economic impact of shifting the cost of supporting the act among the different types and sizes of licensed firms.

The committee also requests the Secretary of Agriculture to investigate the definitions now contained in the act which determine those retailers who are subject to license. A study should be made to ascertain if a dollar value standard rather than tonnage purchased would be more desirable and realistic in determining the licensing liability of retailers. Retailer records normally are kept in dollars and many do not know the net weight of their purchases of fresh and frozen fruits and vegetables. The committee has no desire to expand the coverage of retailers beyond the present provisions of the act but simply to determine if more workable and understandable licensing standards can be developed.

Section 3. Trade names

Section 3 of the bill adds a new subsection (c) to section 3 of the act which makes it clear that a licensee may conduct his business under more than one trade name or change the trade name under which the business is conducted without requiring an additional or new license. It also will vest the Secretary of Agriculture with authority to disapprove the use by a licensee of a trade name which would be deceptive, misleading, or confusing to the trade. After notice and opportunity for hearing a license could be suspended for not to exceed 90 days if the licensee continued to use a trade name which had been disapproved by the Secretary. It also authorizes refusal of license where the proposed trade name of the applicant would be deceptive, misleading, or confusing to the trade if used by such applicant.

Section 4. Bankruptcy

Section 4 amends section 4(a) of the act to provide for the automatic termination of a license upon the licensee being discharged as a bankrupt. An applicant for a license who has been adjudicated or discharged within the past 3 years at present is required to furnish a surety bond before receiving a license. Present law does not provide for license termination solely on account of bankruptcy.

Section 5. License refusal

Section 5 of the bill completely revises section 4(b) of the act, which relates to the grounds upon which an application for license will be denied. It directs the Secretary to refuse a license to any applicant if (1) the applicant, (2) any person responsibly connected with the applicant, or (3) any partnership, corporation, or association with whom any person described in (1) or (2) was responsibly connected has, within 2 years prior to the license application (a) had his license

revoked,¹ (b) been found guilty of flagrant or repeated violation of section 2 of the act (unless his license was suspended for such violation and such suspension is no longer in effect), (c) been convicted of violating the act of March 3, 1927, relating to the prevention or destruction and dumping of farm produce, or (d) (except in case of bankruptcy and subject to the right of appeal) had a reparation award issued against him which remains unpaid.

This differs from the existing provisions of section 4(b) and 4(c) in that—

(1) Repsonsible connection by the applicant (or one of the applicant's officers, directors, or members, or a holder or more than 10 percent of the applicant's stock) with a person guilty of the specified conduct would require refusal of a license, without showing (as is now required) that the applicant, officer, director, or member was responsible in whole or in part for such conduct.

(2) "Responsible connection," as defined in the bill, covers a somewhat different relationship than that covered by various provisions of existing sections 4(b) and 4(c). For instance, under the bill the Secretary would be required to refuse a license to a corporation applicant if the holder of more than 10 percent of the stock had had a license revoked within 2 years prior to the application. This would not be required under existing section 4(b), although such refusal would be discretionary under section 4(d) if the Secretary found that such stockholder had engaged in prohibited practices, and that by reason of such conduct the applicant was unfit to be licensed.

(3) Violation of section 14(b) of the act relating to fraudulent actions with respect to inspection certificates is omitted from the causes requiring refusal of a license, since grading programs are now carried on under the Agricultural Marketing Act of 1946, which provides for its own criminal penalties and for administrative action leading to refusal of inspection service.

(4) The bonding provisions now contained in section 4(b) would be omitted from section 4(b), to be covered in modified form by section 4(c) of the act, as amended by section 6 of the bill. As will be noted in the explanation of section 6 of the bill, sections 5 and 6 of the bill provide for more uniform periods of license ineligibility than are provided under existing law.

Except as noted above, the grounds for refusal of a license remain the same under the proposed amendment as under existing sections 4(b) and 4(c) of the act.

The committee amendment to this section would insert the words "opportunity for" before the word "hearing" in paragraph (B) of section 4(b) as it would be amended by the bill. The reason for this amendment is that in some license revocation proceedings filed by the Department, the license is revoked without a hearing having been held. In all cases the person against whom the charges are filed is afforded an opportunity for hearing. If no answer to the complaint is filed and no request is made for a hearing, a hearing is not usually scheduled. In a recent case the respondent admitted the charges, waived oral hearing, and consented to the issuance of an order revoking his license. Both in default cases and in consent cases orders

¹ Also if his license is currently under suspension.

may be issued revoking licenses without a hearing having been held. It is not intended that a person who remains silent when charges are filed against him, and allows his license to be revoked by default, or one who consents to the revocation of his license, should be in any different position from one whose license was revoked after requesting and being afforded a hearing. A somewhat comparable provision in section 10 of the bill uses the words "notice and opportunity for hearing."

Section 6. Period of license ineligibility

Section 6 of the bill amends section 4(c) of the act to establish more equitable and realistic standards with respect to the period of withholding of license and the conditions for granting of license to persons who have been ineligible under section 4(b). At the end of the 2-year ineligibility period specified in section 4(b) a license may be issued if the applicant furnishes a bond covering compliance with the act and assuring payment of reparation awards for transactions occurring within 4 years following issuance of the license. Without such bond, the license may not be issued for an additional year, making the total period of ineligibility 3 years. Under the present provisions of the act there is no uniformity. This leads to inequitable results. At present a person whose license has been revoked for flagrant violations can be relicensed with a bond after the expiration of 1 year; whereas a person who has merely failed to pay a reparation award in any amount, and even in the absence of any finding of flagrant violation, cannot be relicensed for a period of 2 years regardless of the reason for his nonpayment, short of bankruptcy.

Section 7. Hearings in minor cases

Section 7 of the bill amends subsections (c) and (d) of section 6 of the act by striking out \$500 and substituting \$1,500, thus providing that on any claim for reparation under the act involving \$1,500 or less, a hearing need not be held and the matter can be disposed of under a shortened procedure through affidavits and depositions unless the Secretary determines that a hearing is necessary to insure justice; whereas at present, notice and opportunity for hearing must be afforded on all claims for reparation exceeding \$500. This amendment can eliminate approximately 50 percent of the hearings, thereby expediting the disposition of reparation proceedings and saving the parties, as well as the Government, substantial amounts of money in cost of hearings.

Section 8. Bond on appeal

Section 8 amends section 7(c) of the act to make it clear that an appeal from a reparation award of the Secretary shall not be effective as an appeal, and therefore not a matter within the jurisdiction of the district court of the United States in which the petition is filed, unless the required bond is filed with the court within 30 days from and after the date of the Secretary's order. It is also provided that the required bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a recognized surety company.

Section 9. Stay of license termination on appeal

Section 9 amends section 7(d) of the act to correct a deficiency relating to automatic suspension of license following a judgment of

the district court on appeal from an order of the Secretary. The act now provides that the license shall be automatically suspended after 10 days from the date of judgment unless prior thereto the judgment of the court has been satisfied, and makes no provision for withholding the suspension if the judgment of the district court is appealed to the court of appeals. The amendment takes care of this point by providing that the license will not be suspended while a stay of the judgment is in effect.

Section 10. Employment of certain persons by licensees

Section 10 amends section 8(b) of the act to clarify and make more effective the provisions of the act with respect to employment by licensees of persons who have been found to have violated the act or failed to pay reparation awards under the act, as well as persons responsibly connected with such persons. It prohibits the employment of these persons by a licensee without the approval of the Secretary and prescribes standards with respect to the conditions for such approval, authorizing the approval of such employment upon the furnishing and maintaining of a surety bond satisfactory to the Secretary as assurance that the licensee's business will be conducted in conformance with the act and all reparation awards paid. Employment under such conditions may be approved, with respect to unpaid reparation awards, at any time and, with respect to persons found guilty of flagrant or repeated violations of the act, after 1 year, with authority in the Secretary to approve employment of the latter persons without a surety bond after the expiration of 2 years. It is further provided that the Secretary may increase the amount of bond required and that failure to comply with his order in that regard shall result in automatic termination of approval. Any licensee hiring a person without the approval of the Secretary in violation of this provision, after notice and opportunity for hearing, may have his license suspended or revoked. At present the act applies only to the employment of a person in a responsible position. This has caused serious difficulties due to the problem of delineating what constitutes a responsible position under all circumstances and the difficulty of ascertaining the true nature of the employee's relationship with the licensee. Under the present provisions of the act the restrictions against employment are directed specifically to persons whose licenses had been revoked or suspended and persons responsibly connected therewith. The bill extends such restrictions to persons whose licenses could have been revoked or suspended if they had had active licenses. As amended, section 8(b) would prohibit employment of persons covered by it unless such employment is approved by the Secretary; whereas at present it prohibits such employment only after notice by the Secretary.

Section 10 extends section 8(b) of the act to cover employment of "persons" rather than "individuals." This would extend it to partnerships, associations, and corporations, which under the new definition of "employment" may be regarded as self-employed. The need for this change may be illustrated by an actual case where a reparation order was issued against a partnership composed of two corporations and an individual. One of the corporations was a licensee in its own right and no means were available to prevent it from continuing operations as a licensee. Under section 8(b) as it would be amended by the bill, such continuation as a licensee could be prevented.

Section 11. Export Apple and Pear Act appropriations

Section 11 amends the Export Apple and Pear Act by adding a new section 10, authorizing appropriations for the administration of such act. This amendment is related to the amendment contained in section 2 of the bill, which deletes the present authorization for the use of Perishable Agricultural Commodities Act funds to cover the cost of administering the Export Apple and Pear Act.

DEPARTMENTAL VIEWS

DEPARTMENT OF AGRICULTURE,
Washington, D.C., April 27, 1961.

HON. ALLEN J. ELLENDER

*Chairman, Committee on Agriculture and Forestry,
U.S. Senate.*

DEAR SENATOR ELLENDER: This is in reply to your letter of February 24, 1961, requesting a report on S. 1037, a bill to amend the provisions of the Perishable Agricultural Commodities Act of 1930, relating to practices in the marketing of perishable agricultural commodities.

The Department recommends passage of the bill.

The major purposes of the bill are to (1) improve and clarify the provisions relating to relicensing or employment of persons who have violated the act or have been affiliated with such persons, (2) provide that an oral hearing need not be held when the amount claimed as damages in a reparation complaint does not exceed the sum of \$1,500, (3) provide authority for the Secretary to increase the annual license fee to a maximum of \$50 if necessary to meet the expenses for administering this act and the so-called Produce Agency Act, and (4) provide that PACA license fees will not be used to finance the cost of administering the Export Apple and Pear Act and authorize appropriations for this purpose.

The bill revises provisions relating to relicensing or employing a person whose license has been suspended or revoked or who has otherwise violated the act as well as persons affiliated with such persons. These provisions as now written are ambiguous and inconsistent. For example, the minimum license debarment period following violation of the act presently ranges from 1 year to forever, although the nature of the different offenses does not justify this great disparity. Since the act is not a criminal statute, the only enforcement vehicle is the economic sanction of controlling a person's right to do business for himself or to be employed by another licensee. Most persons engaged in the industry are limited by training and experience to the fruit and vegetable business in seeking their most gainful livelihood. Consequently, frequent attempts are made to circumvent the law following revocation or suspension of a license. Effective enforcement of the act, therefore, rests on having comprehensive, clear, and equitable provisions relating to relicensing and employment which fully cover the situations encountered in this area in the fruit and vegetable industry.

The PAC Act presently provides that, in reparation proceedings, an opportunity for an oral hearing must be afforded at the respondent's place of business whenever the damages claimed exceed the sum of \$500. Otherwise a hearing need not be held and proof in support of the complaint and in support of the respondent's answer may be supplied by depositions or verified statements of facts. The bill increases this sum to \$1,500. The sum of \$500 represented about the

average value of a carload of fresh fruits and vegetables in 1930 when the act was passed. This average value today is nearer \$2,000. Handling of formal complaints can be expedited if the shortened procedure is authorized for these small sums involving not more than \$1,500 which no longer justify the time and expense incurred by the parties involved. The bill does not preclude the Secretary from granting an oral hearing where a complaint involves a sum less than \$1,500 whenever he concludes that a hearing is desirable in order to develop the evidence satisfactorily.

The bill deletes reference to the Export Apple and Pear Act approved June 10, 1933 (7 U.S.C. 581-589), with regard to the use of PACA license fees for administrative expenses. The Export Apple and Pear Act establishes minimum standards for export and has no connection with the PAC Act. The PACA special fund in which license fees are deposited should not be used for carrying out nonrelated activities. Such a change would entail financing the administrative costs of the Export Apple and Pear Act approximating \$25,000 per year from funds appropriated under the Marketing Services appropriation. This change in financing would not require a budget increase. These costs would be those related to the development, promulgation, and enforcement of the required export standards.

Administration of the PAC Act, except for the cost of legal services and partial coverage of retirement costs from appropriated funds, is financed from the license fees which are now fixed by the statute at a maximum of \$25 per year. PACA administrative expenses have exceeded collections for the past 2 years, necessitating withdrawals from the limited reserve fund. Under current operating costs, it would be impossible to provide effective and timely service to the industry at the present rate of assessment. An increase in the license fees, therefore, is urgently needed.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary*.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act—

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture;

(3) The term "interstate or foreign commerce" means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or

Territory, or the District of Columbia but through any place outside thereof; or within the District of Columbia;

(4) The term "perishable agricultural commodity"—(A) means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character; and (B) includes cherries in brine as defined by the Secretary in accordance with trade usages;

(5) The term "commission merchant" means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another;

(6) The term "dealer" means any person engaged in the business of buying or selling in carloads any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a "dealer" in respect of sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a "dealer" in respect of any such commodity in any calendar year until his purchases of such commodity in carloads in such year are in excess of twenty; and (C) no person buying any such commodity for canning and/or processing within the State where grown shall be considered a "dealer" whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph 4 of this section. Any person not considered as a "dealer" under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a "dealer." As used in this paragraph, the term "in carloads" includes wholesale or jobbing quantities as defined for any such commodity by the Secretary;

(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively;

(8) A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another State, or for processing within the State and the shipment outside the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act;

(9) The term "responsibly connected" means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

(10) The term "employ" and "employment" mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.

UNFAIR CONDUCT

SEC. 2. It shall be unlawful in or in connection with any transaction in interstate or foreign commerce—

(1) For any commission merchant, dealer, or broker to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled in interstate or foreign commerce;

(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned in interstate or foreign commerce by such dealer;

(3) For any commission merchant to discard, dump, or destroy without reasonable cause any perishable agricultural commodity received by such commission merchant in interstate or foreign commerce;

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction;

(5) For any commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or State, country, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce;

(6) For any commission merchant, dealer, or broker, for a fraudulent purpose, to remove, alter, or tamper with any card, stencil, stamp, tag, or other notice placed upon any container or railroad car containing any perishable agricultural commodity, if such card, stencil, stamp, tag, or other notice contains a certificate or statement under authority of any Federal or State inspector or in compliance with any Federal or State law or regulation as to the grade or quality of the commodity contained in such container or railroad car or the State or country in which such commodity was produced;

(7) For any commission merchant, dealer, or broker, without the consent of an inspector, to make, cause, or permit to be made any change by way of substitution or otherwise in the contents of a load or lot of any perishable agricultural commodity after it has been officially inspected for grading and certification, but this shall not prohibit re-sorting and discarding inferior produce.

LICENSES

SEC. 3. (a) After the expiration of six months after the approval of this Act no person shall at any time carry on the business of a com-

mission merchant, dealer, or broker without a license valid and effective at such time. Any person who violates any provision of this subdivision shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit brought by the United States. Any person violating this provision may, upon a showing satisfactory to the Secretary of Agriculture, or his authorized representative, that such violation was not willful but was due to inadvertence, be permitted by the Secretary, or such representative, to settle his liability in the matter by the payment of the fees due for the period covered by such violation and an additional sum, not in excess of \$25, to be fixed by the Secretary of Agriculture or his authorized representative. Such payment shall be deposited in the Treasury of the United States in the same manner as regular license fees.

(b) Any person desiring any such license shall make application to the Secretary. The Secretary may by regulation prescribe the information to be contained in such application. Upon the filing of the application, and annually thereafter, the applicant shall pay [a fee not to exceed \$25 which shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the "Perishable Agricultural Commodities Act fund", which shall be available for all expenses necessary to the administration of this Act, the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), and the Export Apple and Pear Act, approved June 10, 1933 (7 U.S.C. 581-589):] *such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), but in no event shall such fee exceed \$50 and, for a person buying perishable agricultural commodities solely for sale at retail, such fee shall not exceed \$25. Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the "Perishable Agricultural Commodities Act Fund", which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above: Provided, That financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years shall be included in the budget as submitted to the Congress annually. The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase.*

(c) *A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant.*

Sec. 4. (a) Whenever an applicant has paid the prescribed fee the Secretary, except as provided elsewhere in this Act, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this Act, or is automatically suspended under section 7(d) of this Act, but said license shall automatically terminate on any anniversary date thereof unless the annual fee has been paid: *Provided*, That notice of the necessity of paying the annual fee shall be mailed at least thirty days before the anniversary date: *Provided further*, That if the annual fee is not paid by the anniversary date the licensee may obtain a renewal of that license at any time within thirty days by paying the fee provided in section 3(b), plus \$5 which shall be deposited in the Perishable Agricultural Commodities Act fund provided for by section 3(b): *And provided further*, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt.

(b) [The Secretary shall refuse to issue a license to an applicant (1) if he finds that the applicant has previously been responsible in whole or in part for any violation of the provisions of the Act for which a license of the applicant, or the license of any partnership, association, or corporation in which the applicant held any office or, in the case of a partnership, had any share or interest, was revoked under the provisions of section 8; or (2) if at any time within two years he has found after notice and hearing that said applicant was responsible in whole or in part for any flagrant or repeated violation of the provisions of section 2; or (3) if he finds, in case the applicant is a partnership, association or corporation, that any individual holding office or, in the case of a partnership, having any interest or share in the applicant, has previously been responsible in whole or in part for any violation of the provisions of the Act for which the license of such individual, or of any partnership, association, or corporation in which such person held any office, or, in the case of a partnership, had any share or interest, was revoked under the provisions of section 8; or (4) if at any time within two years he has found after notice and hearing, in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant was responsible in whole or in part for any flagrant or repeated violation of the provisions of section 2; or (5) if he finds that the applicant, subject to his right of appeal under section 7(c), has failed, except in case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual, or against a partnership of which he was a member, or an association or corporation in which he held any office, or, in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant, subject to his right of appeal under section 7(c), has failed, except in the case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual or against a partnership of which he was a member, or an association or corporation in which he held any office. Notwithstanding all of the foregoing provisions of this paragraph, the Secretary, in the case of such appli-

cant, may issue a license if the applicant furnishes a bond or other satisfactory assurance that his business will be conducted in accordance with the provisions of the Act and that he will pay all reparation orders which may previously have been issued against him for violations, or which may be issued against him within two years following the date of the license, subject to his right of appeal under section 7(c), but such license shall not be issued before the expiration of one year from the date of revocation of license or from the date of the Secretary's finding that the applicant has been responsible, in whole or in part, for any flagrant or repeated violation of section 2. Such bond shall be in an amount sufficient in the judgment of the Secretary of Agriculture to insure payment of such reparation order; **¶** *The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is a person who, or is or was responsibly connected with a person who—*

(A) *has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;*

(B) *within two years prior to the date of application has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;*

(C) *within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491–497), relating to the prevention of destruction and dumping of farm produce; or*

(D) *has failed, except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application.*

(c) **¶** *The Secretary shall refuse to issue a license to an applicant if he finds after notice and hearing that at any time within two years said applicant has been found guilty in a Federal court of having violated the provisions of the Act known as the Produce Agency Act (7 U.S.C., secs. 491–497), or of having violated section 14(b) of this Act, or, in case the applicant is a partnership, that any member of the partnership was found guilty within two years of having violated the Produce Agency Act, or section 14(b) of this Act, or, if the applicant is an association or corporation, that any officer or any person holding a responsible position therein has been found within two years to have been guilty of violating the Produce Agency Act or section 14(b) of this Act; **¶** Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order*

of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided;

(d) The Secretary may withhold the issuance of a license to an applicant, for a period not to exceed thirty days pending an investigation, for the purpose of determining (a) whether the applicant is unfit to engage in the business of a commission merchant, dealer, or broker because the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, prior to the date of the filing of the application engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal court, or (b) whether the application contains any materially false or misleading statement or involves any misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee of the applicant. If after investigation the Secretary believes that the applicant should be refused a license, the applicant shall be given an opportunity for hearing within sixty days from the date of the application to show cause why the license should not be refused. If after the hearing the Secretary finds that the applicant is unfit to engage in the business of a commission merchant, dealer, or broker because the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, prior to the date of the filing of the application engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal court, or because the application contains a materially false or misleading statement made by the applicant or by its representative on its behalf, or involves a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, the Secretary may refuse to issue a license to the applicant;

(e) The Secretary may refuse to issue a license to an applicant if he finds that the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, has, within three years prior to the date of the application, been adjudicated or discharged as a bankrupt, or was a general partner of a partnership or officer or holder of more than 10 per centum of the stock of a corporation adjudicated or discharged as a bankrupt, unless the applicant furnishes a bond of such nature and amount as may be determined by the Secretary or other assurance satisfactory to the Secretary that the business of the applicant will be conducted in accordance with this Act.

LIABILITY TO PERSON DAMAGED

SEC. 5. (a) If any commission merchant, dealer, or broker violates any provision of section 2 he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as hereinafter provided, or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this Act are in addition to such remedies.

COMPLAINT AND INVESTIGATION

SEC. 6. (a) Any person complaining of any violation of any provision of section 2 by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(b) Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture or any interested person may file, in accordance with rules and regulations of the Secretary, a complaint of any violation of any provision of this Act by any commission merchant, dealer, or broker and may request an investigation of such complaint by the Secretary.

(c) If there appear to be, in the opinion of the Secretary, any reasonable grounds for investigating any complaint made under this section, the Secretary shall investigate such complaint and may, if in his opinion the facts warrant such action, have said complaint served by registered mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the said person is engaged in business: *Provided*, That in complaints wherein the amount claimed as damages does not exceed the sum of ~~[\$500]~~ \$1,500 a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact;

(d) After opportunity for hearing on complaints where the damages claimed exceed the sum of ~~[\$500]~~ \$1,500 has been provided or waived and on complaints where damages claimed do not exceed the sum of ~~[\$500]~~ \$1,500 not requiring hearing as provided herein, the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 2;

(e) In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and

any reparation award that may be issued by the Secretary of Agriculture against the complainant on any counter claim by respondent: *Provided*, That the Secretary shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

REPARATION ORDER

SEC. 7. (a) If after a hearing on a complaint made by any person under section 6, or without hearing as provided in section 6, paragraphs (e) and (d), or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Secretary determines that the commission merchant, dealer, or broker has violated any provision of section 2, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Secretary under such rules and regulations as he shall prescribe, unless the respondent has already made reparation to the person complaining, may issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination. The remaining disputed amount shall be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Secretary with respect to the undisputed sum;

(b) If any commission merchant, dealer, or broker does not pay the reparation award within the time specified in the Secretary's order, the complainant, or any person for whose benefit such order was made, may within three years of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages, except that the findings and orders of the Secretary shall be prima-facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit;

(c) Either party adversely affected by the entry of a reparation order by the Secretary may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United

States for the district in which said hearing was held: *Provided*, That in cases handled without a hearing in accordance with paragraphs (c) and (d) of section 6 or in which a hearing has been waived by agreement of the parties, appeal shall be to the district court of the United States for the district in which the party complained against is located. [Such appeal shall be perfected by the filing of a notice thereof together with a petition in duplicate which shall recite prior proceedings before the Secretary, and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with the clerk of said court with proof of service thereof upon the adverse party, together with a bond in double the amount of the reparation award conditioned upon the payment of the judgment entered by the court plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail.] *Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States.* The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima facie evidence of the facts therein stated. Appellee shall not be liable for costs in said court and if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court;

(d) Unless the licensee against whom a reparation order has been issued shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order his license shall be suspended automatically at the expiration of such five-day period until he shows to the satisfaction of the Secretary that he has paid the amount therein specified with interest thereon to date of payment: *Provided*, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of [ten] thirty days from the date of the judgment on the

appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

SUSPENSION AND REVOCATION OF LICENSE

SEC. 8. (a) Whenever (a) the Secretary determines, as provided in section 6, that any commission merchant, dealer, or broker has violated any of the provisions of section 2, or (b) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14(b) of this Act, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may by order revoke the license of the offender;

(b) [The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any commission merchant, dealer, or broker who, after the date given in such notice, continues to employ in any responsible position any individual whose license has been revoked or is under suspension or who was responsibly connected with any firm, partnership, association, or corporation whose license has been revoked or is under suspension. Employment of an individual whose license has been revoked or is under suspension for failure to pay a reparation award or who was responsibly connected with any firm, partnership, association, or corporation whose license has been revoked or is under suspension for failure to pay a reparation award after one year following the revocation or suspension of any such license may be permitted by the Secretary upon the filing by the employing licensee of a bond, of such nature and amount as may be determined by the Secretary, or other assurance satisfactory to the Secretary that its business will be conducted in accordance with the provisions of this Act;] Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7 (c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The

Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section;

(c) If, after a license shall have been issued to an applicant, the Secretary believes that the license was obtained through a false or misleading statement in the application therefor or through a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, he may, after thirty days' notice and an opportunity for a hearing, revoke said license, whereupon no license shall be issued to said applicant or any applicant in which the person responsible for such false or misleading statement or misrepresentation, concealment, or withholding of facts is financially interested, except under the conditions set forth in paragraph (b) of section 4;

(d) In addition to being subject to the penalties provided by section 3(a) of this Act, any commission merchant, dealer, or broker who engages in or operates such business without a valid and effective license from the Secretary shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States for an injunction to restrain such defendant from further continuing so to engage in or operate such business, and, if the court shall find that the defendant is continuing to engage in such business without a valid and effective license, the court shall issue an injunction to restrain such defendant from continuing to engage in or to operate such business without such license.

ACCOUNTS AND RECORDS

SEC. 9. Every commission merchant, dealer, and broker shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stock-holding or otherwise. If such accounts, records, and memoranda are not so kept, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days.

EFFECTIVE DATE AND FINALITY OF ORDER

SEC. 10. Any order of the Secretary under this Act other than an order for the payment of money shall take effect within such reasonable time, not less than ten days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, accordingly as it is prescribed in the order, unless such order is suspended, modified, or set aside by the Secretary or is suspended, modified, or set aside by a court of competent jurisdiction. Any such order of the Secretary, if regularly made, shall be final, unless before the date prescribed for its taking effect application is made to a court of competent jurisdiction by the commission merchant, dealer, or

broker against whom such order is directed to have such order set aside or its enforcement, operation, or execution suspended or restrained.

INJUNCTIONS

SEC. 11. For the purposes of this Act the provisions of all laws relating to the suspending or restraining of the enforcement, operation, or execution, or the setting aside in whole or in part, of the orders of the Interstate Commerce Commission are made applicable to orders of the Secretary under this Act and to any person subject to the provisions of this Act.

GENERAL PROVISIONS

SEC. 12. The Secretary may report any violation of this Act for which a civil penalty is provided to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay. The costs and expenses of such proceedings shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 13. (a) The Secretary or his duly authorized agents shall have the right to inspect such accounts, records, and memoranda of any commission merchant, dealer, or broker as may be material (1) in the investigation of complaints under this Act, or (2) to the determination of ownership, control, packer, or State, country, or region of origin in connection with commodity inspections, or (3) to ascertain whether section 9 of this Act is being complied with, and if any such commission merchant, dealer, or broker refuses to permit such inspection, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender until permission to make such inspection is given. The Secretary or his duly authorized agents shall have the right to inspect any lot of any perishable agricultural commodity covered by this Act, and if any commission merchant, dealer, or broker having ownership of or control over such lot fails or refuses to authorize or allow such inspection, the Secretary may, after thirty days' notice and an opportunity for a hearing, publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days.

(b) The Secretary, or any officer or employee designated by him for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under this Act.

(c) In case of disobedience to a subpoena, the Secretary or any of his examiners may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of accounts, records, and memoranda. Any district court of the United States within the jurisdiction of which any hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the Secretary or his examiner or to produce accounts, records, and memoranda if so ordered, or to give evidence touching any matter pertinent to any complaint; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(d) The Secretary may order testimony to be taken by deposition in any proceeding or investigation or incident to any complaint pending under this Act at any stage thereof. Such depositions may be taken before any person designated by the Secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce accounts, records, and memoranda in the same manner as witnesses may be compelled to appear and testify and produce accounts, records, and memoranda before the Secretary or any of his examiners.

(e) Witnesses summoned before the Secretary or any officer or employee designated by him shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like service in the courts of the United States.

(f) No person shall be excused from attending, testifying, answering any lawful inquiry, or deposing, or from producing any documentary evidence, before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary or any such officer or employee, in any cause or proceeding, based upon or growing out of any alleged violating of this Act, or upon the taking of any deposition herein provided for, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he is compelled under oath so to testify, or produce evidence, documentary or otherwise, before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary, or any such officer or employee, or upon the taking of any such deposition, or in any such cause or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 14. (a) The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses

for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: And *provided further*, That official inspection certificates for fresh fruits and vegetables issued by the Secretary of Agriculture pursuant to any law shall be received by all officers and all courts of the United States, in all proceedings under this Act, and in all transactions upon contract markets under Commodities Exchange Act (7 U.S.C., Supp. 2, secs. 1 to 17(a)), as prima facie evidence of the truth of the statements therein contained;

(b) Whoever shall falsely make, issue, alter, forge, or counterfeit, or cause or procure to be falsely made, issued, altered, forged, or counterfeited, or willingly aid, cause, procure or assist in, or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate of inspection issued under authority of this Act, the Produce Agency Act of March 3, 1927 (7 U.S.C., secs. 491-497), or any Act making appropriations for the Department of Agriculture; or shall utter or publish as true or cause to be uttered or published as true any such false, forged, altered, or counterfeited certificate, for a fraudulent purpose, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for a period of not more than one year, or both, at the discretion of the court.

SEC. 15. The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere from the Perishable Agricultural Commodities Act fund provided for by section 3(b) and any supplements to such fund, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose. This act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but it is intended that all such statutes shall remain in full force and effect except in so far only as they are inconsistent herewith or repugnant hereto.

SEC. 16. In construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any commission merchant, dealer, or broker, within the scope of his employment or office, shall in every case be deemed the act, omission, or failure of such commission merchant, dealer, or broker as that of such agent, officer, or other person.

SEPARABILITY

SEC. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SHORT TITLE

SEC. 18. This Act may be cited as the "Perishable Agricultural Commodities Act, 1930."

SEC. 19. Any unexpended balances of appropriations for the current fiscal year, and any subsequent appropriations, made to carry out the acts referred to in section 3(b) hereof, may be deposited in the Perishable Agricultural Commodities Act fund.

ACT OF JUNE 10, 1933 (EXPORT APPLE AND PEAR ACT)

SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act.



S. 1037

[Report No. 750]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 22, 1961

Mr. HOLLAND introduced the following bill; which was read twice and referred to the Committee on Agriculture and Forestry

AUGUST 16, 1961

Reported by Mr. HOLLAND, with amendments

[Insert the part printed in italic]

A BILL

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the first section of the Perishable Agricultural Com-
4 modities Act, 1930 (7 U.S.C. 499a), is amended by adding
5 at the end thereof the following new paragraphs:
6 “(9) The term ‘responsibly connected’ means affiliated
7 or connected with a commission merchant, dealer, or broker
8 as (A) partner in a partnership, or (B) officer, director,
9 or holder of more than 10 per centum of the outstanding
10 stock of a corporation or association;

1 “(10) The terms ‘employ’ and ‘employment’ mean
2 any affiliation of any person with the business operations
3 of a licensee, with or without compensation, including
4 ownership or self-employment.”

5 SEC. 2. The third sentence of section 3 (b) of such Act
6 (7 U.S.C. 499c (b)) is amended to read as follows: “Upon
7 the filing of the application, and annually thereafter, the
8 applicant shall pay such fee as the Secretary determines
9 necessary to meet the reasonably anticipated expenses for
10 administering this Act and the Act to prevent the destruc-
11 tion or dumping of farm produce, approved March 3, 1927
12 (7 U.S.C. 491–497), but in no event shall such fee exceed
13 \$50 *and, for a person buying perishable agricultural com-*
14 *modities solely for sale at retail, such fee shall not exceed*
15 *\$25.* Such fee, when collected, shall be deposited in the
16 Treasury of the United States as a special fund, without fiscal
17 year limitation, to be designated as the ‘Perishable Agri-
18 cultural Commodities Act Fund’, which shall be available for
19 all expenses necessary to the administration of this Act and
20 the Act approved March 3, 1927, referred to above: *Pro-*
21 *vided,* That financial statements prescribed by the Director
22 of the Bureau of the Budget for the last completed fiscal
23 year, and as estimated for the current and ensuing fiscal
24 years, shall be included in the budget as submitted to the

1 Congress annually. The Secretary shall give public notice
2 of any increase to be made in the annual fee prescribed
3 by him hereunder and shall allow a reasonable time prior
4 to the effective date of such increase for interested persons
5 to file their views on or objections to such increase.”

6 SEC. 3. Section 3 of such Act (7 U.S.C. 499c) is fur-
7 ther amended by adding at the end thereof the following new
8 subsection:

9 “(c) A licensee may conduct business in more than one
10 trade name or change the name under which business is con-
11 ducted without requiring an additional or new license. The
12 Secretary may disapprove the use of a trade name if, in his
13 opinion, the use of the trade name by the licensee would be
14 deceptive, misleading, or confusing to the trade, and the Sec-
15 retary may, after notice and opportunity for a hearing, sus-
16 pend for a period not to exceed ninety days the license of
17 any licensee who continues to use a trade name which the
18 Secretary has disapproved for use by such licensee. The
19 Secretary may refuse to issue a license to an applicant if he
20 finds that the trade name in which the applicant proposes to
21 do business would be deceptive, misleading, or confusing to
22 the trade if used by such applicant.”

23 SEC. 4. Section 4 (a) of such Act (7 U.S.C. 499d (a))
24 is amended by inserting before the period at the end thereof

1 “: *And provided further*, That the license of any licensee
2 shall terminate upon said licensee, or in case the licensee is a
3 partnership, any partner, being discharged as a bankrupt”.

4 SEC. 5. Section 4 (b) of such Act (7 U.S.C. 499d (b))
5 is amended to read as follows:

6 “(b) The Secretary shall refuse to issue a license to
7 an applicant if he finds that the applicant, or any person
8 responsibly connected with the applicant, is a person who, or
9 is or was responsibly connected with a person who—

10 “(A) has had his license revoked under the provi-
11 sions of section 8 within two years prior to the date of
12 the application or whose license is currently under sus-
13 pension;

14 “(B) within two years prior to the date of appli-
15 cation has been found after notice and *opportunity for*
16 hearing to have committed any flagrant or repeated
17 violation of section 2, but this provision shall not apply
18 to any case in which the license of the person found to
19 have committed such violation was suspended and the
20 suspension period has expired or is not in effect;

21 “(C) within two years prior to the date of the ap-
22 plication, has been found guilty in a Federal court of
23 having violated the provisions of the Act of March 3,
24 1927 (7 U.S.C. 491-497), relating to the prevention
25 of destruction and dumping of farm produce; or

1 “(D) has failed, except in the case of bankruptcy
2 and subject to his right of appeal under section 7 (c),
3 to pay any reparation order issued against him within
4 two years prior to the date of the application.”

5 SEC. 6. Section 4 (c) of such Act (7 U.S.C. 499d (c))
6 is amended to read as follows:

7 “(c) Any applicant ineligible for a license by reason of
8 the provisions of subsection (b) of this section may, upon
9 the expiration of the two-year period applicable to him, be
10 issued a license by the Secretary if such applicant furnishes
11 a surety bond in the form and amount satisfactory to the
12 Secretary as assurance that his business will be conducted in
13 accordance with this Act and that he will pay all reparation
14 orders which may be issued against him in connection with
15 transactions occurring within four years following the
16 issuance of the license, subject to his right of appeal under
17 section 7 (c) . In the event such applicant does not furnish
18 such a surety bond, the Secretary shall not issue a license to
19 him until three years have elapsed after the date of the
20 applicable order of the Secretary or decision of the court on
21 appeal. If the surety bond so furnished is terminated for any
22 reason without the approval of the Secretary the license
23 shall be automatically canceled as of the date of such termina-
24 tion and no new license shall be issued to such person during

1 the four-year period without a new surety bond covering the
2 remainder of such period. The Secretary, based on changes
3 in the nature and volume of business conducted by a bonded
4 licensee, may require an increase or authorize a reduction in
5 the amount of the bond. A bonded licensee who is notified
6 by the Secretary to provide a bond in an increased amount
7 shall do so within a reasonable time to be specified by the
8 Secretary, and upon failure of the licensee to provide such
9 bond his license shall be automatically suspended until such
10 bond is provided.”

11 SEC. 7. Subsections (c) and (d) of section 6 of such
12 Act (7 U.S.C. 499f) are amended by striking out “\$500”
13 each place it appears and inserting in lieu thereof “\$1,500”.

14 SEC. 8. Section 7 (c) of such Act (7 U.S.C. 499g (c))
15 is amended by striking the second sentence thereof and sub-
16 stituting therefor the following: “Such appeal shall be per-
17 fected by the filing with the clerk of said court a notice of
18 appeal, together with a petition in duplicate which shall
19 recite prior proceedings before the Secretary and shall state
20 the grounds upon which petitioner relies to defeat the right
21 of the adverse party to recover the damages claimed, with
22 proof of service thereof upon the adverse party. Such appeal
23 shall not be effective unless within thirty days from and after
24 the date of the reparation order the appellant also files with

1 the clerk a bond in double the amount of the reparation
2 awarded against the appellant conditioned upon the pay-
3 ment of the judgment entered by the court, plus interest and
4 costs, including a reasonable attorney's fee for the appellee,
5 if the appellee shall prevail. Such bond shall be in the form
6 of cash, negotiable securities having a market value at least
7 equivalent to the amount of bond prescribed, or the under-
8 taking of a surety company on the approved list of sureties
9 issued by the Treasury Department of the United States."

10 SEC. 9. Section 7 (d) of such Act (7 U.S.C. 499g (d))
11 is amended by striking the proviso at the end of the section
12 and substituting therefor the following: "*Provided*, That if
13 on the appeal the appellee prevails or if the appeal is dis-
14 missed the automatic suspension of license shall become effec-
15 tive at the expiration of thirty days from the date of the
16 judgment on the appeal, but if the judgment is stayed by a
17 court of competent jurisdiction the suspension shall become
18 effective ten days after the expiration of such stay, unless
19 prior thereto the judgment of the court has been satisfied."

20 SEC. 10. Section 8 (b) of such Act (7 U.S.C. 499h (b))
21 is amended to read as follows:

22 " (b) Except with the approval of the Secretary, no li-
23 censee shall employ any person, or any person who is or has
24 been responsibly connected with any person—

1 “(1) whose license has been revoked or is currently
2 suspended by order of the Secretary;

3 “(2) who has been found after notice and oppor-
4 tunity for hearing to have committed any flagrant or re-
5 peated violation of section 2, but this provision shall not
6 apply to any case in which the license of the person
7 found to have committed such violation was suspended
8 and the suspension period has expired or is not in effect;
9 or

10 “(3) against whom there is an unpaid reparation
11 award issued within two years, subject to his right of
12 appeal under section 7 (c).

13 The Secretary may approve such employment at any time
14 following nonpayment of a reparation award, or after one
15 year following the revocation or finding of flagrant or
16 repeated violation of section 2, if the licensee furnishes and
17 maintains a surety bond in form and amount satisfactory to
18 the Secretary as assurance that such licensee's business will
19 be conducted in accordance with this Act and that the
20 licensee will pay all reparation awards, subject to its right
21 of appeal under section 7 (c), which may be issued against
22 it in connection with transactions occurring within four years
23 following the approval. The Secretary may approve em-
24 ployment without a surety bond after the expiration of two
25 years from the effective date of the applicable disciplinary

1 order. The Secretary, based on changes in the nature and
2 volume of business conducted by the licensee, may require
3 an increase or authorize a reduction in the amount of the
4 bond. A licensee who is notified by the Secretary to provide
5 a bond in an increased amount shall do so within a reason-
6 able time to be specified by the Secretary, and if the li-
7 censee fails to do so the approval of employment shall auto-
8 matically terminate. The Secretary may, after thirty days'
9 notice and an opportunity for a hearing, suspend or revoke
10 the license of any licensee who, after the date given in such
11 notice, continues to employ any person in violation of this
12 section."

13 SEC. 11. The Act of June 10, 1933 (48 Stat. 123; 7
14 U.S.C. 581-589), popularly known as the Export Apple
15 and Pear Act, is amended by adding at the end thereof a
16 new section as follows:

17 "SEC. 10. There are hereby authorized to be appropri-
18 ated such sums as may be necessary for the administration
19 of this Act."

87TH CONGRESS
1ST SESSION

S. 1037

[Report No. 750]

A BILL

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

By Mr. HOLLAND

FEBRUARY 22, 1961

Read twice and referred to the Committee on Agriculture and Forestry

AUGUST 16, 1961

Reported with amendments

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE
(For information only;
should not be cited
or cited)

CONTENTS

Issued August 22, 1961
For actions of August 21, 1961
87th-1st, No. 144

Appropriations.....	4,8,10	
Area redevelopment.....	28	
Botanic gardens.....	14,30	
Civil defense.....	20	
Claims.....	5	
Credit.....	34	
Dairy industry.....	25	
Disaster relief.....	6	
Farm loans.....	3	
Farm program.....	31	
Fisheries.....	17	
Foreign aid.....	11,26	
Forestry.....	7,16,24	
Hog cholera.....	1,12	
Lands.....	16,27	
Legislative program.....	9	
Monopolies.....	33	
Patents.....	22	
Perishable commodities.....	15	
Personnel.....	19	
Research.....	32	
Rural redevelopment.....	32	
Saline water.....	23,32	
Shipping.....	18	
Surplus commodities.....	13	
Tobacco.....	2	
Water compact.....	21	
Wheat.....	29	

HIGHLIGHTS: Senate passed bills to: Provide for hog cholera eradication. Permit transfer of tobacco allotments. Clarify and simplify operations of Farm Credit agencies. Senate debated State-Justice appropriation bill. Sen. Bennett introduced and discussed bill to establish research center for rural redevelopment.

SENATE

- HOG CHOLERA.** Passed without amendment S. 1908, to direct the Secretary of Agriculture to initiate a national hog cholera eradication program, restrict the interstate movement of virulent or other hog cholera virus as necessary, and establish a committee to advise on the program. p. 15368
- TOBACCO ALLOTMENTS.** Passed as reported H. R. 1022, to authorize leasing of tobacco acreage allotments for the crop years 1962 and 1963. As passed by the Senate, the bill would be inapplicable with respect to burley tobacco, and in the case of Maryland (type 32), leasing would be limited to those farms which had planted at least 75% of their Maryland allotments in each of the years 1960 and 1961. The leasing of allotments would be permitted only between farms in the same county, and not more than 5 acres would be permitted to be leased and transferred to any farm. pp. 15375-7
- FARM LOANS.** Passed as reported S. 1927, to make a number of amendments to simplify and clarify the operations of institutions supervised by FCA. pp. 15369-71
- STATE-JUSTICE APPROPRIATION BILL.** Began debate on this bill, H. R. 7371. pp. 15345-6, 15369, 15371-5, 15377-8, 15390-412

5. CLAIMS. Passed without amendment H. R. 6835, to simplify the payment of certain miscellaneous judgments and the payment of certain compromise settlements in State and foreign court cases. This bill will now be sent to the President. p. 15361
6. DISASTER RELIEF. Passed without amendment S. 1742, to authorize Federal assistance to Guam, American Samoa, and the Trust Territory of the Pacific Islands in major disasters. p. 15367
7. FORESTRY. Sen. Bennett submitted and discussed amendments which he intends to propose to S. 174, the wilderness preservation bill. p. 15345
8. APPROPRIATIONS. Both houses received a Budget Bureau letter reporting, pursuant to law, that the "Marketing research and service" appropriation has been apportioned on a basis which indicates the necessity for a supplemental appropriation estimate; to Appropriations Committees. pp. 15343, 15487
9. LEGISLATIVE PROGRAM. Majority Leader Mansfield stated that "beginning this week, the Senate can anticipate being in session every Saturday from now on." p. 15339

HOUSE

10. APPROPRIATIONS. House conferees were appointed on H. R. 7035, the Labor-Health, Education, and Welfare appropriation bill. Senate conferees have been appointed. p. 15414
11. FOREIGN AID. Passed S. 1983, the foreign aid authorization bill, with an amendment inserting the text of H. R. 8400, which had previously been passed by the House (p. 15414). Conferees were appointed in both houses. pp. 15378-90, 15414
Rep. Stratton inserted three articles, "Procurement of U. S. Foreign Aid Materials In the United States Since 1940," "Foreign Aid: Facts and Fallacies," and "U. S. Per Capita Foreign Aid." pp. 15479-81
12. HOG CHOLERA. At the request of Rep. Weaver, passed over H. R. 7176, to provide for a national hog cholera eradication program. p. 15421
13. SURPLUS COMMODITIES. Passed without amendment S. 1873, to permit CCC commodities donated for use in home economics courses to also be used for training college students if the same facilities and instructors are used for training both high school and college students in home economics courses. This bill will now be sent to the President. p. 15425
14. BOTANIC GARDEN. At the request of Rep. Gross, passed over H. R. 5628, to provide for a study and investigation of desirability and feasibility of establishing and maintaining the National Tropical Botanic Garden. p. 15430
15. PERISHABLE COMMODITIES. A subcommittee of the Agriculture Committee voted to report to the full Committee with amendments H. R. 5023, to make various amendments to the Perishable Agricultural Commodities Act. p. D739
16. PUBLIC LANDS. Passed without amendment S. 702, to authorize the Secretary of Agriculture to convey a tract of forest land in Wyoming to the town of Afton. This bill will now be sent to the President. p. 15422
Passed without amendment H. R. 3879, to authorize the Secretary of Agriculture to convey to Wyoming for agricultural purposes the SCS Farson Pilot Farm

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CONTENTS

Issued September 5, 1961
For actions of September 1, 1961
87th-1st, No. 153

Adjournment.....	22
Appropriations.....	1
Bulk commodities.....	16
Corn.....	24
Dairy research.....	26
Farm labor.....	9,21
Farm program.....	27
Fish farming.....	25
Fisheries.....	12
Food.....	19
Foreign aid.....	1,20
Foreign currencies.....	29
Foreign trade.....	6,28
Hams.....	13
Housing.....	21
Legislative program...8,21	
Manpower.....	23
Perishable commodities..10	
Personnel.....	7,17
Poultry.....	4
Reclamation.....	18
Recreation.....	3
Schools.....	21
Small business.....	16
Transportation.....	11
Watersheds.....	15
Wetlands.....	5
Wheat.....	2
Wilderness.....	14,21

Senate passed bills to: Exempt certain migratory labor children from Fair Labor Standards Act; establish National Citizens Council on Migratory Labor. House committee reported foreign aid appropriation bill. House subcommittee voted to report bill for participation in feed grains program of farms on which summer fallow is practiced. House received amendment to budget for foreign aid appropriations. Sen. Neuberger commended USDA decision on watered hams.

HOUSE

- 1. APPROPRIATIONS.** The Appropriations Committee reported H. R. 9033, the foreign aid appropriation bill (H. Rept. 1107). p. 16773
Received from the President "amendments to the budget for the fiscal year 1962 involving an increase in appropriations in the amount of \$1,200 million for the Agency for International Development" (H. Doc. 230); to Appropriations Committee. p. 16773
Received from the President "proposed supplemental appropriations in the amount of \$8,414,000 for various agencies of the executive branch" (H. Doc. 231), to Appropriations Committee. p. 16773
- 2. WHEAT.** The "Daily Digest" states that "Committee on Agriculture: Subcommittee on Wheat and Subcommittee on Livestock and Feed Grains held a joint meeting and ordered reported favorably to the full committee H. R. 8914 (amended), to amend the Soil Conservation and Domestic Allotment Act in regard to summer fallow." p. D801

3. RECREATION. The Agriculture Committee reported with amendments H. R. 4934, to authorize the Secretary of Agriculture to modify certain leases entered into for the provision of recreation facilities in reservoir areas (H. Rept. 1104). p. 16773
4. POULTRY. The Agriculture Committee reported with amendments H. R. 7866, to extend the Poultry Products Inspection Act to Puerto Rico (H. Rept. 1105). p. 16773
5. WETLANDS. The Agriculture Committee reported with amendments H. R. 8520, to limit financial and technical assistance for drainage of certain wetlands (H. Rept. 1106). p. 16773
6. FOREIGN TRADE. Both Houses received from the President the fifth annual report on the trade agreements program (H. Doc. 234). pp. 16755, 16774.
The Ways and Means Committee reported with amendments H. R. 7692, to amend the Tariff Act of 1930 to require certain new packages of imported articles to be marked to indicate the country of origin (H. Rept. 1102). p. 16773
7. PERSONNEL. The Subcommittee of the Post Office and Civil Service Committee voted to report to the full committee H. R. 8565, to permit certain Government employees to elect to receive compensation in accordance with the Federal Employees Pay Act in lieu of certain compensation at a saved rate. p. D801
8. LEGISLATIVE PROGRAM. It was agreed that the public works appropriation bill will be considered on Thurs., Sept. 7. p. 16756

SENATE

9. FARM LABOR. Passed with amendments S. 1132, to provide for the establishment of a National Advisory Council on Migratory Labor to advise the President and the Congress with respect to all matters relating to migratory agricultural labor. pp. 16855-6
Passed with amendments S. 1123, to amend the Fair Labor Standards Act so as to provide that a child may be employed in agricultural work outside of school hours if he is employed by his parents on the home farm, or if he is 14 years of age or over, or if he is between 12 and 14 years of age and works within 25 miles of his home with the written consent of his parents or if his parent or person standing in the place of his parent is also employed on the same farm. pp. 16856-61
10. PERISHABLE COMMODITIES. Passed with amendments S. 1037, to amend the Perishable Agricultural Commodities Act so as to improve and clarify provisions dealing with the eligibility for license of persons guilty of specified acts and persons affiliated with them; authorize an increase of license fees from \$25 per year to \$50, except for retail dealers and brokers of frozen fruits and vegetables; eliminate the Export Apple and Pear Act from the acts administered with license fees received under the Perishable Agricultural Commodities Act and authorize appropriations to carry out the Export Apple and Pear Act; regulate the use of trade names by licensees to prevent deception; provide that opportunity for an oral hearing need not be provided in reparation cases unless the amount in dispute exceed \$1,500 (instead of the present \$500); make it clear that in an appeal from a reparation order bond must be filed within 30 days after entry of the order and provide that the bond shall be in cash, negotiable securities, or the undertaking of a recognized surety company; and defer license suspension in case of appeal until all judicial appeals have ended. pp. 16802-4

Mr. KEATING. Mr. President, will the Senator yield for a question?

Mr. BIBLE. I am happy to yield.

Mr. KEATING. What is involved in the establishment of the White House as a national monument? Are the words "national monument" words of art?

Mr. BIBLE. The amendment I have offered is directed to exactly that point. If the Senator from New York will permit the amendment to be read, I think it may answer the question he has in mind.

The PRESIDING OFFICER. Without objection, the amendment will be read.

The LEGISLATIVE CLERK. It is proposed to amend the title so as to read: "A bill concerning the White House and providing for the care and preservation of its historic and artistic contents".

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nevada.

Mr. KEATING. Mr. President, will the Senator yield?

Mr. BIBLE. I yield.

Mr. KEATING. I believe that the actual bill has another title. I have always thought of a national monument as something stodgy and dull—an edifice with pillars—which is certainly not in keeping with the spirit of the White House or the present occupants of the White House. We have the youngest first family in history. To make their surroundings a national monument would seem to me to be very unwise.

If Larry O'Brien wanted to call Senators, he would have to say he had "word from the President's national monument." Such a greeting, I am afraid, would not be in keeping with present practices and ideas.

Mr. BIBLE. Mr. President, for that reason we have offered an amendment to strike out all after the enacting clause and to insert new language, the effect of which would merely continue the White House as it is, to be administered pursuant to the National Park Act. It has no characteristics of a national monument. The particular section of the bill which is most important is section 2. The section provides:

SEC. 2. Articles of furniture, fixtures and decorative objects of the White House when declared by the President to be of historic or artistic interest, together with such similar articles, fixtures, and objects as are acquired by the White House in the future when similarly so declared, shall thereafter be considered to be inalienable and the property of the White House. Any such article, fixture, or object when not in use or on display in the White House shall be transferred by direction of the President as a loan to the Smithsonian Institution for its care, study, and storage or exhibition, and such articles, fixtures, and objects shall be returned to the White House from the Smithsonian Institution on notice by the President.

The question was raised in the committee that the White House should not be a national monument. The committee went along with the suggestion. I believe we have approximately 83 national monuments throughout the United States. We did not want to characterize the White House as one of them.

The bill is more or less of a bookkeeping provision. It provides that as the occupants of the White House change from presidential election to presidential election, tastes may vary and the desires of the various occupants may change. If they desire to remove furniture which is in the White House, they may do so, and the able Superintendent of the Smithsonian Institution, Mr. Carmichael, has agreed that such furniture can be consigned to his care and it will be left in the Smithsonian Institution for future generations to see.

The furniture that graced the White House during the terms of office of President Eisenhower, President Truman, President Roosevelt, President Kennedy, or whoever it might be, will always be available, but the designation of the White House as a national monument has been completely removed from the bill.

Mr. KEATING. Mr. President, will the Senator yield?

Mr. BIBLE. I yield.

Mr. KEATING. I think the suggestion is a constructive one. We are all familiar with the fine work that the present First Lady has done in embellishing the White House in accordance with her unusually good taste.

The White House has been enriched in meaning because of the dedication and good taste of its present occupants. It is gratifying to note that this splendid tradition is being carried on in most praiseworthy fashion by our present Chief Executive and the charming and talented First Lady. It has been a pleasure to learn of the First Lady's warm personal concern with the decorating of the White House and with the preservation of the time-mellowed symbols and attributes of our national past.

Mr. President, I am very happy to have been assured that from now on when we call the White House we shall not receive the answer, "President's National Monument." I certainly think that the amendment would make a great improvement in the bill.

Mr. BARTLETT. Mr. President, will the Senator yield?

Mr. BIBLE. I yield.

Mr. BARTLETT. In addition, we now have the assurance of the Senator from Nevada that in the future furniture will be placed on loan with the Smithsonian.

Mr. HOLLAND. Mr. President, I wonder if the Senator from Nevada will yield for a question?

Mr. BIBLE. I am delighted to yield to my distinguished friend.

Mr. HOLLAND. I wonder if the bill would preclude such practices as have prevailed in the past, under which such items as, for example, the Dolly Madison mirror and numerous chandeliers and other objects of art have been transferred from the White House to the Senate wing of the Capitol and presumably to the House wing also?

Mr. BIBLE. I think the bill would not preclude such practices.

I think the procedure would be under the exclusive jurisdiction of the occupant of the White House, whoever he might be. The bill merely provides a logical repository for many of the great

items that are in the White House through different administrations. I see nothing in the bill that would preclude what the Senator from Florida has suggested.

Mr. HOLLAND. In other words, if an item was about to be marked for elimination from the White House which either the Senate or the House of Representatives would want to have in the Capitol, if that course were agreeable to the occupant of the White House at that time, arrangements could be worked out to make the desired transfer without the item coming under the provisions of the proposed legislation?

Mr. BIBLE. I would think so.

Mr. HOLLAND. I thank the Senator. The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nevada.

The amendment was agreed to. The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

TRANSFER OF U.S. VESSEL "ALASKA" TO STATE OF CALIFORNIA

Mr. MORSE. Mr. President, I ask unanimous consent that the Senate return to the consideration of Calendar No. 813, H.R. 3788.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 3788) to provide for the transfer of the U.S. vessel *Alaska* to the State of California, for the use and benefit of the department of fish and game of such State.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Oregon?

There being no objection, the Senate proceeded to consider the bill.

Mr. MORSE. I wish to make a few comments on the bill.

I am at a loss to understand the explanation of Calendar 813, H.R. 3788, which the Department of the Interior has made. A letter from Kenneth Holum, Assistant Secretary of the Interior, states:

In 1956, the vessel was no longer required for our research purposes and was declared to be in excess of our needs. Thereafter, the General Services Administration authorized disposal of the vessel as surplus to the needs of the Government. Bids were solicited for sale of the vessel; however, no sale was consummated at that time.

I understand, therefore, that bids were received by the General Services Administration, but they did not think the bids were sufficient, and therefore no sale was consummated.

Notice what happened then:

The State of California requested that the *Alaska* be made available to it on an indefinite loan basis. In the circumstances, that request was approved and the vessel has remained in use by the State since that time.

Mr. President, that is a remarkable transaction. I think we had better find out by what authority any department proceeds to loan out Federal property to a State or to anyone else for use by that State or any other recipient as

property of all the taxpayers of this country with apparently no rental and no compensation to be received by the Federal taxpayers.

Notice what happened then:

We believe the value of the *Alaska*, as a fishing boat, probably would not exceed \$25,000. We are advised, however, that the State has expended \$195,000 for alteration and conversion of the craft as a biological research vessel.

That is very interesting. By what authority did the General Services Administration proceed to let the State of California spend \$195,000 on a piece of Federal property without any transfer of title of that property to the State of California, with the State of California investing all that money in the vessel, without even introducing a bill in Congress to give the vessel to the State? Yet the State spent \$195,000 on the vessel.

I do not like the procedure. I do not like anything about this procedure. I want a full and detailed explanation from the General Services Administration and from the Department of the Interior with regard to this procedure. If we once allow this precedent to be established, if we once allow this procedure to be followed on the part of the General Services Administration and the Department of the Interior, we will open the gates for this kind of procedure which is not in the interest of the taxpayers of the country.

There are a great many State fishery and wildlife departments who would like to be the recipient of this kind of hand-out. If we are going to start this with California, let us see what we can do for the benefit of fishery and wildlife departments of other States, too.

I object to the bill being considered on the calendar until I get a full explanation from both the General Services Administration and the Department of the Interior, telling me by what procedure and by what law the vessel was turned over to the State of California and by what right this course of action was followed.

It would be very easy to get approval for this kind of transfer. It would be very easy, if they are going to spend \$195,000, to pay 50 percent of the appraised fair market value of the vessel, which is all that the Morse formula calls for. That would amount to \$12,500.

MARKETING OF PERISHABLE AGRICULTURAL COMMODITIES

Mr. BARTLETT. Mr. President, I ask that the Senate proceed to the consideration of Order No. 726, S. 1037.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act of 1930, relating to practices in the marketing of perishable agricultural commodities.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection the Senate proceeded to consider the bill, which had

been reported from the Committee on Agriculture and Forestry with amendments.

Mr. HOLLAND. Mr. President, this item was cleared yesterday not only with the two Senators who had previously objected to its passage, but also with the calendar committees on both sides of the aisle, and with the leadership on both sides of the aisle. The item was agreed upon as one that should be brought up today. I know of no objection. That does not mean, of course, that a Senator may not have objection to it at this time.

The bill relates to the Perishable Agricultural Commodities Act which was passed in 1930, to give much better protection to farmers throughout the country producing and marketing perishable commodities than they had therefore.

I shall not expand that subject. I believe everyone knows that there was a time in the remote past, before the passage of the act, when some commission merchants and others did not fairly treat the producers of highly perishable commodities.

That day has gone forever since the passage and administration of the Perishable Agricultural Commodities Act. However, various imperfections have been discovered in the administration of the act which call for modernization and minor amendments. The bill as unanimously reported by the Committee on Agriculture and Forestry attempts to correct various small deficiencies and to modernize the act.

I ask unanimous consent to have printed in the RECORD at this point an explanation of the provisions of the bill, and I shall be very happy to go into any of them if any Senator wishes to ask me about any of them.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR HOLLAND

This bill contains a number of amendments to the Perishable Agricultural Commodities Act, 1930. The Perishable Agricultural Commodities Act is designed to suppress unfair and fraudulent practices in the marketing of fruits and vegetables. Under it commission merchants, dealers, and brokers are licensed; required to keep accurate accounts of their transactions; and prohibited from fraudulent accounting, unjustifiable rejections, failure to deliver, misbranding, and other improper practices. For violation of the act, their licenses may be revoked or suspended, or reparation orders may be issued against them requiring them to pay such amounts as may be necessary to fulfill their obligations. The cost of administering the act is borne out of license fees.

Since 1930, the act has been very successful in regulating the fresh fruit and vegetable industry. Experience under the act has, however, disclosed some minor inequities which should be corrected, and it is the purpose of this bill to do so. For instance, a person who might be ineligible for employment by a licensee might nevertheless be eligible to obtain a license himself. Again, a person whose license was revoked for certain misconduct might be ineligible for employment by another licensee, while another person guilty of the same conduct and guilty of the further violation of not obtaining a license would not be so ineligible. Another example of an imperfection

in the existing law is the lack of uniformity with respect to the periods of license ineligibility. A person whose license has been revoked for a flagrant violation of the act can at present be relicensed after the expiration of 1 year, while a person who has merely failed to pay a reparation award, no matter how small the amount, cannot be relicensed for a period of 2 years. The bill would correct these and similar situations dealing with the eligibility of a person for a license or the eligibility of a person for employment by a licensee.

In addition, the bill would also (1) increase the annual license fee from \$25 to \$50, except in the case of retailers; (2) regulate the use of trade names by licensees to prevent deception; (3) limit the cases in which an opportunity for an oral hearing must be provided to those involving in excess of \$1,500; (4) clarify and strengthen the provisions relating to appeal bonds; (5) defer license suspensions until all appeals have ended; and (6) provide for the use of appropriated funds instead of license fees to carry out the unrelated Export Apple and Pear Act.

The bill has been developed through a series of industry meetings over a period of several years and has the general approval of the industry as well as the Department of Agriculture. Hearings were conducted by the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices. At the hearings an amendment was proposed to expand the already nearly complete exemption of retail grocers. The committee felt that any further expansion of this exemption would not be wise and would lessen the effectiveness of the act. However, the committee has recommended an amendment to prevent any increase in the license fee charged retail dealers.

Mr. HOLLAND. When the calendar was called some time ago the Senator from Tennessee [Mr. KEFAUVER] and the Senator from Oklahoma [Mr. MONRONEY] objected to the passage of the bill, so that they might look into it. I did not understand that they had any fundamental objections whatever to the bill. Since that time the Senator from Tennessee has advised me that he has no objections whatever, and has authorized me to so state to the Senate. The Senator from Oklahoma made the same statement to me, except for suggesting a minor amendment, which is thoroughly agreeable to me, and which I send forward at this time on behalf of the Senator from Oklahoma.

I know of no objection whatever to the bill. It is certainly to the interest of all the producers of perishable commodities. I may say that this is the first time in a long, long time when we found every one of the national agricultural organizations coming before our committee to support the enactment of the bill, without any objection whatever, and without any exception. I believe that facts should speak rather loudly for the enactment of the bill.

The PRESIDING OFFICER. The first committee amendment will be stated.

The LEGISLATIVE CLERK. On page 2, line 13, after the figure "\$50", to insert "and, for a person buying perishable agricultural commodities solely for sale at retail, such fee shall not exceed \$25".

Mr. HOLLAND. Mr. President, I call up the amendment offered to the committee amendment by the Senator from Oklahoma [Mr. MONRONEY], who is

necessarily absent on official business, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 2, line 14, after the word "retail", to insert ", and for a person who is subject to the Act solely because of his operations as a broker of frozen fruits and vegetables."

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma [Mr. MONRONEY] to the committee amendment.

The amendment to the amendment was agreed to.

The committee amendment, as amended, was agreed to.

The LEGISLATIVE CLERK. On page 4, line 15, after the word "and", it is proposed to insert the words "opportunity for".

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), is amended by adding at the end thereof the following new paragraphs:

"(9) The term 'responsibly connected' means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

"(10) The terms 'employ' and 'employment' mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment."

Sec. 2. The third sentence of section (3) b of such Act (7 U.S.C. 499c(b)) is amended to read as follows: "Upon the filing of the application, and annually thereafter, the applicant shall pay such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), but in no event shall such fee exceed \$50 and, for a person buying perishable agricultural commodities solely for sale at retail, and for a person who is subject to the Act solely because of his operation as a broker of frozen fruits and vegetables, such fee shall not exceed \$25. Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the 'Perishable Agricultural Commodities Act Fund', which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above: *Provided*, That financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually. The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase."

Sec. 3. Section 3 of such Act (7 U.S.C. 499c) is further amended by adding at the end thereof the following new subsection:

"(c) A licensee may conduct business in more than one trade name or change the

name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such license. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant."

Sec. 4. Section 4(a) of such Act (7 U.S.C. 499d(a)) is amended by inserting before the period at the end thereof: "And provided further, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt."

Sec. 5. Section 4(b) of such Act (7 U.S.C. 499d(b)) is amended to read as follows:

"(b) The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is a person who, or is or was responsibly connected with a person who—

"(A) has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;

"(B) within two years prior to the date of application has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;

"(C) within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491-497), relating to the prevention of destruction and dumping of farm produce; or

"(D) has failed, except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application."

Sec. 6. Section 4(c) of such Act (7 U.S.C. 499d(c)) is amended to read as follows:

"(c) Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secre-

tary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided."

Sec. 7. Subsections (c) and (d) of section 6 of such Act (7 U.S.C. 499f) are amended by striking out "\$500" each place it appears and inserting in lieu thereof "\$1,500".

Sec. 8. Section 7(c) of such Act (7 U.S.C. 499g(c)) is amended by striking the second sentence thereof and substituting therefor the following: "Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States."

Sec. 9. Section 7(d) of such Act (7 U.S.C. 499g(d)) is amended by striking the proviso at the end of the section and substituting therefor the following: "Provided, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied."

Sec. 10. Section 8(b) of such Act (7 U.S.C. 499h(b)) is amended to read as follows:

"(b) Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

"(1) whose license has been revoked or is currently suspended by order of the Secretary;

"(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

"(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary

order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section."

SEC. 11. The Act of June 10, 1933 (48 Stat. 123; 7 U.S.C. 581-589), popularly known as the Export Apple and Pear Act, is amended by adding at the end thereof a new section as follows:

"Sec. 10. There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act."

AGE 62 REDUCED ANNUITIES OF RAILROAD RETIREMENT ACT

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 819, S. 2395.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 2395) to amend the Railroad Retirement Act of 1937 to provide reduced annuities to male employees who have attained age 62, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Public Welfare with amendments on page 2, after line 10, to insert a new section, as follows:

SEC. 3. Section 5(1) (1) of the Railroad Retirement Act of 1937 is amended by inserting before the semicolon at the end thereof the following: ". Where a woman has qualified for an annuity under this section as a widow, and marries another employee who dies within one year after the marriage, she shall not be disqualified for an annuity under this section as the widow of the second employee by reason of not having been married to the employee for one year".

And, in line 19, to change the section number from "3" to "4"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2(a)3 of the Railroad Retirement Act of 1937 is amended to read as follows:

"3. Men who will have attained the age of sixty and will have completed thirty years of service, or individuals who will have attained the age of sixty-two and will have completed less than thirty years of service, but the annuity of such men or such individuals shall be reduced by 1/180 for each calendar month that he or she is under age sixty-five when the annuity begins to accrue."

SEC. 2. Section 2(f) of the Railroad Retirement Act of 1937 is amended by striking "three years" and inserting in lieu thereof "one year" and by inserting after the word "filed" where it first appears the following: ", or in the month prior to her or his marriage to such annuitant or pensioner was eligible for an annuity under subsection (a) or (d) of section 5 of this Act or, on the basis of disability, under subsection (c) thereof".

SEC. 3. Section 5(1) (1) of the Railroad Retirement Act of 1937 is amended by inserting before the semicolon at the end thereof the following: ". Where a woman has qualified for an annuity under this section as a widow, and marries another employee who dies within one year after the marriage, she shall not be disqualified for an annuity under this section as the widow of the second employee by reason of not having been married to the employee for one year".

SEC. 4. The amendments made by this Act shall be effective with respect to annuities beginning to accrue in calendar months after the calendar month of enactment thereof.

Mr. BURDICK. Mr. President, the purpose of the bill is to permit persons eligible to receive benefits under the Railroad Retirement Act to have substantially the same benefits as those who receive benefits under the social security system. The bill permits workers who have not had 30 years of service to qualify for annuities at age 62. It also provides for benefits for spouses and widows and widowers. The principal change in that regard is that it permits a wife to be eligible for benefits after 1 year of marriage instead of 3 years.

Mr. President, I ask unanimous consent to have a statement of the purpose of the bill printed at this point in the RECORD.

There being no objection, the statement of purpose was ordered to be printed in the RECORD, as follows:

The principal purpose of the bill is to permit, under the Railroad Retirement Act, men (not entitled to full annuities on the basis of disability) who do not have 30 years of creditable service to qualify for and receive an annuity after attainment of age 62, which would be reduced on an actuarial basis to compensate for the qualification before age 65. This would conform to the provisions of subsections (a) and (q) of section 202 of the Social Security Act, added by the 1961 amendments to that act (Public Law 87-64), under which men who have at least the minimum of service needed to qualify for old-age benefits may after attainment of age 62 obtain old-age benefits on a reduced basis. Women already had the right under the Social Security Act and now have it under the Railroad Retirement Act.

The second purpose is to reduce from 3 years to 1 year the time which must elapse after marriage before any wife or husband who is otherwise eligible for a spouse's annuity can qualify for such an annuity, and to enable wives or husbands who in the month before marriage were eligible for a widow's, widower's, parent's, or a child's annuity which is based on disability, to receive a spouse's annuity immediately upon marriage if then otherwise eligible and, if not, as soon as eligibility otherwise is obtained. This would also conform with similar rights which the Social Security Act affords through provisions which were incorporated into subsection (b) and (f) of section 216 of that act by the 1958 amendments (Public Law 85-840) and the 1960 amendments (Public Law 86-778).

In addition, the bill would also cause women who had qualified for an annuity under the Railroad Retirement Act as a widow before their marriage not to be disqualified for an annuity as the widow of the new husband if he dies within 1 year of the marriage.

GENERAL CONSIDERATIONS

The following is quoted from pages 5 and 6 of House Report No. 216, the report of the Committee on Ways and Means, House of Representatives, to accompany H.R. 6027 (which was enacted as Public Law 87-64, the Social Security Amendments of 1961):

"The provision of benefits at age 62 for men will help to alleviate the hardships faced by that group of men who, because of ill health, technological unemployment, or other reasons, find it impossible to continue working until they reach 65. It is well known that older workers who lose their jobs find it more difficult to get new jobs than do younger unemployed workers. The plight of the older unemployed man is particularly bad. It is, of course, worse during periods of recession and in areas of chronic unemployment. Even with relatively high employment there will always be individuals nearing age 65 who will lose their jobs and find it impossible to get new ones. Adoption of this amendment will make the program, to which these people have made contributions over the years in expectation of receiving benefits when they are too old to work, flexible enough to provide a degree of protection for them when they find themselves unable to get work because of conditions beyond their control when they are getting along in years, even though they have not reached the age of 65.

"Provisions for optional retirement before age 65 are quite common in private pension plans. A study of the pension programs of 230 companies, made by the Bankers Trust Co. of New York in 1960, showed that among the collectively bargained plans 96 percent permitted early retirement and among the noncollectively bargained plans 88 percent permitted early retirement. In another 1960 study (by the Bureau of Labor Statistics) it was found that early retirement provisions were included in 224 of the 300 plans studied (75 percent), and covered about 3 million of the 4.6 million workers who were members of these plans (12 of these plans covering about 350,000 workers provided early retirement for women only). Moreover, it appears that the number of plans providing for optional early retirement is increasing; in a comparable 1952 study (by the Bureau of Labor Statistics) only 166 of the 300 plans which were included had early retirement provisions."

The same considerations which were applicable to the liberalization of the Social Security Act in respect of the time relative to marriage at which a wife's or husband's benefit may begin are applicable to the amendment provided in section 2 of the bill as to the time relative to marriage at which a spouse's annuity may begin.

A widow who had qualified for an annuity as such loses the annuity when she marries. The bill by preventing her disqualification for annuity as the widow of the new husband if he dies within a year of the marriage would protect her against the loss of rights to annuity which she would have otherwise except for the marriage and early death of the new husband.

SECTIONAL EXPLANATION OF THE BILL

Section 1. Reduced annuities for men: Section 1 of the bill would revise section 2(a)(3) of the Railroad Retirement Act so that men as well as women can obtain a reduced annuity after attainment of age 62 even though they do not have 30 years of creditable service. The reduction would be by one one-hundred-and-eightieth for each calendar month that the applicant is under age 65 when the annuity begins to accrue. This is the same basis by which retirement annuities and spouse's annuities now provided by the act for individuals who are not eligible for those annuities in the full amount are reduced.

The requirement of at least 10 years of service for eligibility for any retirement annuity would remain unchanged, as would the right of a woman with 30 years of service to obtain a full annuity at age 60, and the right of any individual to obtain a full annuity before age 65 on the basis of disability.

87TH CONGRESS
1ST SESSION

S. 1037

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 5, 1961

Referred to the Committee on Agriculture

AN ACT

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the first section of the Perishable Agricultural Com-
4 modities Act, 1930 (7 U.S.C. 499a), is amended by adding
5 at the end thereof the following new paragraphs:

6 “(9) The term ‘responsibly connected’ means affiliated
7 or connected with a commission merchant, dealer, or broker
8 as (A) partner in a partnership, or (B) officer, director,
9 or holder of more than 10 per centum of the outstanding
10 stock of a corporation or association;

1 “(10) The terms ‘employ’ and ‘employment’ mean
2 any affiliation of any person with the business operations
3 of a licensee, with or without compensation, including
4 ownership or self-employment.”

5 SEC. 2. The third sentence of section 3 (b) of such Act
6 (7 U.S.C. 499c (b)) is amended to read as follows: “Upon
7 the filing of the application, and annually thereafter, the
8 applicant shall pay such fee as the Secretary determines
9 necessary to meet the reasonably anticipated expenses for
10 administering this Act and the Act to prevent the destruc-
11 tion or dumping of farm produce, approved March 3, 1927
12 (7 U.S.C. 491-497), but in no event shall such fee exceed
13 \$50 and, for a person buying perishable agricultural com-
14 modities solely for sale at retail, and for a person who is
15 subject to the Act solely because of his operations as a
16 broker of frozen fruits and vegetables, such fee shall not ex-
17 ceed \$25. Such fee, when collected, shall be deposited in the
18 Treasury of the United States as a special fund, without fiscal
19 year limitation, to be designated as the ‘Perishable Agri-
20 cultural Commodities Act Fund’, which shall be available for
21 all expenses necessary to the administration of this Act and
22 the Act approved March 3, 1927, referred to above: *Pro-*
23 *vided*, That financial statements prescribed by the Director
24 of the Bureau of the Budget for the last completed fiscal
25 year, and as estimated for the current and ensuing fiscal

1 years, shall be included in the budget as submitted to the
2 Congress annually. The Secretary shall give public notice
3 of any increase to be made in the annual fee prescribed
4 by him hereunder and shall allow a reasonable time prior
5 to the effective date of such increase for interested persons
6 to file their views on or objections to such increase."

7 SEC. 3. Section 3 of such Act (7 U.S.C. 499c) is fur-
8 ther amended by adding at the end thereof the following new
9 subsection:

10 " (c) A licensee may conduct business in more than one
11 trade name or change the name under which business is con-
12 ducted without requiring an additional or new license. The
13 Secretary may disapprove the use of a trade name if, in his
14 opinion, the use of the trade name by the licensee would be
15 deceptive, misleading, or confusing to the trade, and the Sec-
16 retary may, after notice and opportunity for a hearing, sus-
17 pend for a period not to exceed ninety days the license of
18 any licensee who continues to use a trade name which the
19 Secretary has disapproved for use by such licensee. The
20 Secretary may refuse to issue a license to an applicant if he
21 finds that the trade name in which the applicant proposes to
22 do business would be deceptive, misleading, or confusing to
23 the trade if used by such applicant."

24 SEC. 4. Section 4 (a) of such Act (7 U.S.C. 499d (a))
25 is amended by inserting before the period at the end thereof

1 “: *And provided further*, That the license of any licensee
2 shall terminate upon said licensee, or in case the licensee is a
3 partnership, any partner, being discharged as a bankrupt”.

4 SEC. 5. Section 4 (b) of such Act (7 U.S.C. 499d (b))
5 is amended to read as follows:

6 “(b) The Secretary shall refuse to issue a license to
7 an applicant if he finds that the applicant, or any person
8 responsibly connected with the applicant, is a person who, or
9 is or was responsibly connected with a person who—

10 “(A) has had his license revoked under the provi-
11 sions of section 8 within two years prior to the date of
12 the application or whose license is currently under sus-
13 pension;

14 “(B) within two years prior to the date of appli-
15 cation has been found after notice and opportunity for
16 hearing to have committed any flagrant or repeated
17 violation of section 2, but this provision shall not apply
18 to any case in which the license of the person found to
19 have committed such violation was suspended and the
20 suspension period has expired or is not in effect;

21 “(C) within two years prior to the date of the ap-
22 plication, has been found guilty in a Federal court of
23 having violated the provisions of the Act of March 3,
24 1927 (7 U.S.C. 491–497), relating to the prevention
25 of destruction and dumping of farm produce; or

“(D) has failed, except in the case of bankruptcy and subject to his right of appeal under section 7 (c), to pay any reparation order issued against him within two years prior to the date of the application.”

SEC. 6. Section 4 (c) of such Act (7 U.S.C. 499d (c)) is amended to read as follows:

“(c) Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7 (c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during

1 the four-year period without a new surety bond covering the
2 remainder of such period. The Secretary, based on changes
3 in the nature and volume of business conducted by a bonded
4 licensee, may require an increase or authorize a reduction in
5 the amount of the bond. A bonded licensee who is notified
6 by the Secretary to provide a bond in an increased amount
7 shall do so within a reasonable time to be specified by the
8 Secretary, and upon failure of the licensee to provide such
9 bond his license shall be automatically suspended until such
10 bond is provided.”

11 SEC. 7. Subsections (c) and (d) of section 6 of such
12 Act (7 U.S.C. 499f) are amended by striking out “\$500”
13 each place it appears and inserting in lieu thereof “\$1,500”.

14 SEC. 8. Section 7 (c) of such Act (7 U.S.C. 499g (c))
15 is amended by striking the second sentence thereof and sub-
16 stituting therefor the following: “Such appeal shall be per-
17 fected by the filing with the clerk of said court a notice of
18 appeal, together with a petition in duplicate which shall
19 recite prior proceedings before the Secretary and shall state
20 the grounds upon which petitioner relies to defeat the right
21 of the adverse party to recover the damages claimed, with
22 proof of service thereof upon the adverse party. Such appeal
23 shall not be effective unless within thirty days from and after
24 the date of the reparation order the appellant also files with

1 the clerk a bond in double the amount of the reparation
2 awarded against the appellant conditioned upon the pay-
3 ment of the judgment entered by the court, plus interest and
4 costs, including a reasonable attorney's fee for the appellee,
5 if the appellee shall prevail. Such bond shall be in the form
6 of cash, negotiable securities having a market value at least
7 equivalent to the amount of bond prescribed, or the under-
8 taking of a surety company on the approved list of sureties
9 issued by the Treasury Department of the United States."

10 SEC. 9. Section 7 (d) of such Act (7 U.S.C. 499g (d))
11 is amended by striking the proviso at the end of the section
12 and substituting therefor the following: "*Provided*, That if
13 on the appeal the appellee prevails or if the appeal is dis-
14 missed the automatic suspension of license shall become effec-
15 tive at the expiration of thirty days from the date of the
16 judgment on the appeal, but if the judgment is stayed by a
17 court of competent jurisdiction the suspension shall become
18 effective ten days after the expiration of such stay, unless
19 prior thereto the judgment of the court has been satisfied."

20 SEC. 10. Section 8 (b) of such Act (7 U.S.C. 499h (b))
21 is amended to read as follows:

22 "(b) Except with the approval of the Secretary, no li-
23 censee shall employ any person, or any person who is or has
24 been responsibly connected with any person—

1 “(1) whose license has been revoked or is currently
2 suspended by order of the Secretary;

3 “(2) who has been found after notice and oppor-
4 tunity for hearing to have committed any flagrant or re-
5 peated violation of section 2, but this provision shall not
6 apply to any case in which the license of the person
7 found to have committed such violation was suspended
8 and the suspension period has expired or is not in effect;
9 or

10 “(3) against whom there is an unpaid reparation
11 award issued within two years, subject to his right of
12 appeal under section 7 (c) .

13 The Secretary may approve such employment at any time
14 following nonpayment of a reparation award, or after one
15 year following the revocation or finding of flagrant or
16 repeated violation of section 2, if the licensee furnishes and
17 maintains a surety bond in form and amount satisfactory to
18 the Secretary as assurance that such licensee’s business will
19 be conducted in accordance with this Act and that the
20 licensee will pay all reparation awards, subject to its right
21 of appeal under section 7(c) , which may be issued against
22 it in connection with transactions occurring within four years
23 following the approval. The Secretary may approve em-
24 ployment without a surety bond after the expiration of two
25 years from the effective date of the applicable disciplinary

1 order. The Secretary, based on changes in the nature and
2 volume of business conducted by the licensee, may require
3 an increase or authorize a reduction in the amount of the
4 bond. A licensee who is notified by the Secretary to provide
5 a bond in an increased amount shall do so within a reason-
6 able time to be specified by the Secretary, and if the li-
7 censee fails to do so the approval of employment shall auto-
8 matically terminate. The Secretary may, after thirty days'
9 notice and an opportunity for a hearing, suspend or revoke
10 the license of any licensee who, after the date given in such
11 notice, continues to employ any person in violation of this
12 section."

13 SEC. 11. The Act of June 10, 1933 (48 Stat. 123; 7
14 U.S.C. 581-589), popularly known as the Export Apple
15 and Pear Act, is amended by adding at the end thereof a
16 new section as follows:

17 "SEC. 10. There are hereby authorized to be appropri-
18 ated such sums as may be necessary for the administration
19 of this Act."

Passed the Senate September 1, 1961.

Attest:

FELTON M. JOHNSTON,

Secretary.

AN ACT

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

SEPTEMBER 5, 1961

Referred to the Committee on Agriculture

87TH CONGRESS
2D SESSION

H. R. 10373

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1962

Mr. COOLEY introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the first section of the Perishable Agricultural Com-
4 modities Act, 1930 (7 U.S.C. 449a), is amended by adding
5 at the end of paragraph (7) thereof the following new
6 proviso: "*Provided, however, That no person shall be*
7 deemed to be a broker subject to the provisions of this Act
8 if such person is an independent contractor sales agent
9 negotiating sales for and on account of the vendor as princi-
10 pal and if the only sales of perishable agricultural commodi-

1 ties negotiated by such person are sales of frozen fruits and
2 frozen vegetables packed by or for the vendor;”.

3 SEC. 2. The first section of such Act (7 U.S.C. 499a)
4 is further amended by adding at the end thereof the following
5 new paragraphs:

6 “(9) The term ‘responsibly connected’ means affiliated
7 or connected with a commission merchant, dealer, or broker
8 as (A) partner in a partnership, or (B) officer, director, or
9 holder of more than 10 per centum of the outstanding stock
10 of a corporation or association;

11 “(10) The terms ‘employ’ and ‘employment’ mean any
12 affiliation of any person with the business operations of a
13 licensee, with or without compensation, including ownership
14 or self-employment.

15 “(11) No person buying any perishable agricultural
16 commodity solely for sale at retail shall be considered as a
17 ‘dealer’ in respect of any such commodity in any calendar
18 year, provided that not less than 90 per centum of his pur-
19 chases of such commodity in such year are from one or more
20 licensed wholesale suppliers having an established place of
21 business in the same State, or standard metropolitan area,
22 where such person is engaged in the business of selling such
23 commodity at retail. For the purpose of this subsection, the
24 amount of such purchases shall be determined on the basis
25 of net invoice cost to the retailer. As used in this paragraph,

1 the term 'licensed wholesale supplier' means any person
2 having an unrevoked and valid unsuspended license issued
3 under this Act who is engaged in the business of buying
4 in carloads any perishable agricultural commodity in inter-
5 state or foreign commerce for resale to persons buying such
6 commodity solely for sale at retail."

A BILL

To amend the provisions of the Perishable
Agricultural Commodities Act, 1930, relat-
ing to practices in the marketing of perish-
able agricultural commodities.

By Mr. COOLEY

FEBRUARY 26, 1962

Referred to the Committee on Agriculture

March 1, 1962

17. PERISHABLE COMMODITIES. The "Daily Digest" states: "Committee on Agriculture: On Friday, March, Subcommittee on Domestic Marketing met in executive session and instructed a clean bill to be introduced in the House in lieu of H. R. 5023, the Perishable Agricultural Commodities Act." p. D138
18. HOLIDAYS. The Subcommittee No. 4 of the Judiciary Committee "ordered adversely reported to the full committee" H. R. 612 and related bills to declare October 12 to be a legal holiday, to be known as "Columbus Day," and H.R. 2324, to provide for uniform annual observances of certain national holidays on Mondays. p. D139
19. FOREIGN TRADE. Both Houses received from this Department a report on title I, Public Law 480, agreements concluded during January 1962. pp. 3030, 3142
20. DAIRY PROGRAM. Rep. Schadeberg criticized the administration's proposed dairy program, saying, "Congress must not grant additional power to the administration regarding price controls for dairy products." pp. 3094-5
21. TEXTILES. Rep. Boykin discussed the problems of the textile industry, and inserted a number of letters and a "Long-Term Cotton Textile Arrangement." pp. 3097-101
22. WATER POLLUTION. Rep. Westland critically discussed the impact of the Federal Water Pollution Control Act on the pulp and paper industry in Washington. pp. 3120-2
23. LOBBYING. Received the quarterly reports pursuant to title III of the Regulation of the Lobbying Act. pp. 3145-73

BILLS INTRODUCED

24. PERSONNEL. S. 2937, by Sen. Clark, to amend the Civil Service Retirement Act so as to provide for increases in annuities, eliminate the option with respect to certain survivor annuities, and provide for interchange of credits between the civil service retirement system and the insurance system established by title II of the Social Security Act; to Post Office and Civil Service Committee. Remarks of Sen. Clark pp. 3033-5.
H. R. 10539, by Rep. James C. Davis, to amend the Federal Employees Health Benefits Act of 1959 to provide additional choice of health benefits plans; to Post Office and Civil Service Committee.
25. LANDS. S. 2938, by Sen. Metcalf (for himself and Sen. Mansfield), to provide a standard procedure for the leasing of noncompetent allotted farming and grazing lands on the Crow Indian Reservation, Mont.; to Interior and Insular Affairs Committee.
26. FOREIGN AID. S. Con. Res. 61, submitted by Sen. Humphrey, authorizing the President to issue a proclamation declaring the week of March 25, 1962, as Voluntary Overseas Aid Week; to Judiciary Committee. Remarks of Sen. Humphrey p. 3036
H.R. 10527, by Rep. Adair, and H. R. 10528, by Rep. Abernethy, to amend section 620 of the Foreign Assistance Act of 1961 so as to prohibit assistance under that act to the government of any country which has not established equitable procedures for compensating U. S. citizens for loss of property by expropriation; to Foreign Affairs Committee.
H. R. 10546, by Rep. Rains, to amend section 620 of the Foreign Assistance Act of 1961 to prohibit assistance under that act to Yugoslavia or other Communist countries; to Foreign Affairs Committee.

27. MONOPOLIES. H. R. 10536, by Rep. Dingell, to amend the Clayton Act so as to permit civil actions for treble damages in the case of violations of section 3 of the Robinson-Patman Act; to the Judiciary Committee.
28. MILK. H. J. Res. 646, by Rep. Kastenmeier, to continue for an additional year the current price support price for milk and butterfat; to Agriculture Committee.

ITEMS IN APPENDIX

29. FARM PROGRAM. Rep. MacGregor inserted an article by Dr. O. B. Jesness discussing surplus agricultural commodities, "Surplus Problem Sure to Get Major Emphasis at Farm Forum." pp. A1620-1
- Sen. Talmadge inserted an address by D. W. Brooks, manager of the Ga. Cotton Producers Association, "America and Foreign Agriculture," in which he presents his observations from his recent travels abroad, including a comparison of U. S. and Russian agriculture. pp. A1647-9
- Rep. Rousselot inserted an article, "Communists in Agriculture," stating that "the Communists have operating in the U. S., an agricultural commission of the Communist Party...to function within the agriculture areas of our Nation infiltrate the farmers' organization, seek positions of trust in these groups and then influence them along Communist lines." p. A1664
- Rep. Robison inserted a letter from a constituent critical of the proposed dairy program. pp. A1673-4
30. LANDS. Sen. Moss inserted an article stating that the Justice Department is supporting legislation "that would provide for some legal jurisdiction, either State or Federal, on 281,000 acres now making up a legal no man's land in Arizona." p. A1627
31. TURKEY MARKETING. Rep. Adair inserted an editorial stating that "Secretary Freeman has proposed and is actively promoting a set of complicated Federal turkey marketing orders, which would regulate supply and raise prices by limiting the hatch of turkey eggs and the number of turkeys." p. A1612
32. CONSERVATION. Extension of remarks of Sen. Anderson commending the President's message on natural resource conservation and inserting several editorials commending the message. pp. A1628-9
- Rep. Reuss inserted his article and an editorial commending the President's recommendation for the establishment of an Ice Age National Scientific Reserve in Wisc. pp. A1635-6
33. COTTON. Extension of remarks of Sen. Yarborough inserting an article, "Burris Jackson, President of National Cotton Council." p. 1634
34. FARM MACHINERY. Extension of remarks of Rep. Whitten criticizing the proposal for training tractor drivers for agricultural and flood control work, saying, "I...oppose having the Secretary of Labor get into the domestic agricultural labor field in any way." pp. A1638-41
- in the House
35. FOREIGN TRADE. Speech/of Rep. Reuss inserting an article, "'The Coming Battle Over Trade.'" pp. A1645-6
36. FUTURE FARMERS. Extension of remarks of Rep. Huddleston inserting a speech, "Developing Leadership Through the FFA." p. A1647
37. PEANUTS. Extension of remarks of Rep. Huddleston discussing Alabama Peanut Week. pp. A1654-5

March 19, 1962

15. PERSONNEL; CLAIMS. Passed without amendment H. R. 10357, to provide for the settlement of claims against the U. S. by members of the uniformed services and civilian employees for damage to, or loss of, personal property incident to their service. pp. 4044-6
16. LANDS. Passed as reported H. R. 9097, to authorize the Secretary of the Interior to sell certain public lands in Idaho (p. 4046). Rep. Harding favorably discussed this bill. pp. 4102-3
17. BRIDGES. Passed without amendment H. R. 8982, authorizing a bridge across the Rio Grande at or near Heath Crossing, Tex. p. 4047
Passed without amendment H. R. 9883, to authorize a toll bridge across the Rio Grande near Los Indios, Tex. pp. 4047-8
18. PERISHABLE COMMODITIES. The Subcommittee on Domestic Marketing of the Agriculture Committee voted to report to the full committee with amendments S. 1037, to amend the provisions of the Perishable Agricultural Commodities Act regarding fees, oral hearings, and relicensing of persons under the Act. p. D187
19. CONSERVATION. The Subcommittee on Conservation and Credit of the Agriculture Committee voted to report to the full committee H. R. 9290, to amend the Soil Conservation and Domestic Allotment Act and the Agricultural Adjustment Act so as to make Federal administration of the ACP permanent. p. D187
20. COOPERATIVES. The Subcommittee on Conservation and Credit of the Agriculture Committee voted to report to the full committee H. R. 10374, to reduce the revolving fund available for subscriptions to the capital stock of the banks for cooperatives. p. D187
21. ELECTRIFICATION. The Subcommittee on Conservation and Credit of the Agriculture Committee voted to report to the full committee H. R. 10708, to amend section 203 of the Rural Electrification Act of 1936, as amended, with respect to communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity. p. D187
22. APPROPRIATIONS. Received from the President supplemental appropriation estimates for 1962 of \$25 million for disaster relief and \$10 million for the Small Business Administration (H. Doc. 365). p. 4106
23. SOIL BANK. Received from Agriculture a report on the 1961 conservation reserve program. p. 4106
24. SUGAR. Rep. Harding said "one of the most important pieces of farm legislation which will be considered by this Congress is the revision and extension of the Sugar Act," and inserted a legislative program of the domestic sugar industry and a letter to the President. pp. 4101-2
25. TEXTILES. Rep. Alexander discussed H. R. 9900, the proposed Trade Expansion Act of 1962, and inserted an article, "Lack of Proper Import Quotas Hurts the American Textile Workers." pp. 4077-8
26. TRADE; ADMINISTRATIVE PROCEDURE. Rep. Scherer criticized the Federal Trade Commission's investigation of Kroger Co., and urged an investigation of administrative agency procedures. pp. 4075-7

ITEMS IN APPENDIX

27. FARM PROGRAM. Rep. Findley inserted an editorial, "Imitation Hams or Imitation Dollars?", stating that the court threw out an order by Secretary Freeman "against the meatpackers." pp. A2057-8
Extension of remarks of Rep. Westland stating "American farmers want the Government to get out of their business," and inserting a constituent's letter critical of the farm bill. p. A2047
28. SOIL CONSERVATION; RESEARCH. Extension of remarks of Sen. Wiley inserting resolutions of the Wisc. Assoc. of Soil and Water Conservation District Supervisors recommending an "adequate appropriation for the Agricultural Research Service in the field of soil and water conservation" and that all "longtime farm and ranch plans, as proposed in bill H. R. 10010 ... be carried out through the medium of soil and water conservation districts." pp. A2047-8
Rep. Younger inserted an article critical of the Soil Conservation Service, "This Bureau Conserves Its Money To Build a Bureau." p. A2056
29. RECREATION. Sen. Anderson inserted an address by M. Frederik Smith, a member of the Outdoor Recreation Resources Review Commission, "A Short Look Behind the Recreation Report." pp. A2049-52
Rep. Westland inserted a letter opposing the expansion of Federal activities in the field of recreation. p. A2058
30. WATER POLLUTION. Extension of remarks of Rep. Schwengel expressing concern over water pollution problems and inserting an article on this subject. pp. A2064-5
31. ELECTRIFICATION. Extension of remarks of Rep. Van Zandt inserting his recent address outlining the background of REA and explaining the role of atomic energy in the field of electrification. pp. A2065-6
32. DAIRY INDUSTRY. Extension of remarks of Rep. Quie inserting an article, "Politics and Supports," discussing effects of the rejection by the House Agriculture Committee of a resolution which would have frozen the price supports of milk at the present level. p. A2067
Extension of remarks of Reps. Quie and Nelsen inserting two Minn. Holstein Breeders Convention resolutions and stating that they "voice the opposition" of people in the dairying industry to the system of dairy quotas proposed by the administration. pp. A2071, A2079
33. HEALTH. Extension of remarks of Rep. Farbstein expressing his approval of H. R. 10606, to extend and improve the public assistance and child welfare service programs of the Social Security Act. p. A2082
34. MEAT INSPECTION. Extension of remarks of Rep. Sullivan explaining the provisions of her proposed bill to amend the Meat Inspection Act to extend its coverage in certain areas. pp. A2084-5

BILLS INTRODUCED

35. EDUCATION. H. R. 10807, by Rep. Mathias, making supplemental appropriations for the fiscal year ending June 30, 1962, for payments to local educational agencies under Public Laws 815 and 874, 81st Congress.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued March 23, 1962
For actions of March 22, 1962
87th-2d, No. 43

CONTENTS

Acreage allotments.....28	Education.....9	Potatoes.....28
Adjournment.....19	Electrification.....6,30	Property.....32
Appropriations.....14,18	Feed grains.....1	Public debt.....30
Banking.....5,13	Foreign trade.....7,27	Public works.....10
Conservation.....8	Honeybees.....11	Reclamation.....30
Contracts.....29	Legislative program.....18	Retirement.....15
Cooperatives.....5,12	Livestock diseases.....2	Rural development.....17
Cotton textiles.....7	Loans.....4	Stockpiling.....21
Crop insurance.....20	Perishable commodities...3	Sugar.....26
Dairy.....16	Personnel.....15,31	Taxation.....12

HIGHLIGHTS: House passed bill to permit summer fallow lands to participate in feed grains program. House Rules Committee cleared tax bill. House committee voted to report Youth Conservation Corps bill. House committee voted to report bill for import-export controls on nonparticipants in multilateral cotton textile agreements. Sen. Muskie and Reps. Cooley and McIntire introduced and Sen. Muskie and Rep. McIntire discussed bills to provide supply management program for potatoes.

HOUSE

1. FEED GRAINS. Passed without amendment S. 2533, to permit farmers in summer fallow areas to receive barley, corn, and grain sorghum price support and to participate in the corn and grain sorghum diversion program provided they reduce their corn and grain sorghum acreage to the extent necessary to bring their acreage of corn, grain sorghum, and barley down to not more than 80 percent of the 1959-60 average of those three crops. This bill will now be sent to the President. A similar bill, H. R. 8914, was laid on the table. pp. 4372-81
2. LIVESTOCK DISEASES. The Agriculture Committee voted to report (but did not actually report) with amendments S. 860, to grant the Secretary of Agriculture additional authority to provide greater protection against the introduction and dissemination of diseases of livestock and poultry. p. D200
3. PERISHABLE COMMODITIES. The Agriculture Committee voted to report (but did not actually report) with amendments S. 1037, to amend the provisions of the

Perishable Agricultural Commodities Act retarding fees, oral hearings, and re-licensing of persons under the Act. p. D200

4. LOANS. The Agriculture Committee voted to report (but did not actually report) with amendments H. R. 946, to extend to oyster planters the benefits of the provisions of present law which provide for production disaster loans for farmers and stockmen. p. D200
5. COOPERATIVES. The Agriculture Committee voted to report (but did not actually report) H. R. 10374, to reduce the revolving fund available for subscriptions to the capital stock of the banks for cooperatives. p. D200
6. ELECTRIFICATION. The Agriculture Committee voted to report (but did not actually report) H. R. 10708, to amend section 203 of the Rural Electrification Act of 1936, as amended, with respect to communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity. p. D200
7. FOREIGN TRADE. The Agriculture Committee voted to report (but did not actually report) H. R. 10788, to amend section 204 of the Agricultural Act of 1956 to authorize the President to extend import-export controls to non-participants in multilateral cotton textile agreements. p. D200
8. CONSERVATION. The Committee on Education and Labor voted to report (but did not actually report) H. R. 10682, to authorize the establishment of a Youth Conservation Corps. p. D201
9. EDUCATION. The "Daily Digest" states that the Education and Labor Committee "ordered introduced in the House in lieu of H. R. 10390, the Adult Basic Education Act of 1962 (clean bill -- H. R. 10860)." p. D201
10. PUBLIC WORKS. Subcommittee No. 4 of the Judiciary Committee voted to report to the full committee with amendments H. J. Res. 464, to provide for the designation of the week commencing October 1, 1961, as "National Public Works Week." p. D201
11. HONEYBEES. The Agriculture Committee reported without amendment H. R. 8050, to prohibit the importation of all honeybees of the genus *Apis* in the adult stage except for research purposes by this Department or as the Secretary shall determine (H. Rept. 1477). p. 4392
12. TAXATION; COOPERATIVES. The Rules Committee reported a resolution for the consideration of H. R. 10650, the proposed Revenue Act of 1962, including revisions in tax provisions relative to cooperatives (see Digest 38 for items of interest). p. 4393
13. BANKING. The Banking and Currency Committee reported without amendment H. R. 10162, to amend the Bretton Woods Agreements Act to authorize the U. S. to participate in loans to the International Monetary Fund to strengthen the international monetary system (H. Rept. 1484). p. 4393
14. APPROPRIATIONS. The Appropriations Committee was granted until midnight tonight, Mar. 23, to file a report on the Labor, HEW and related agencies appropriation bill for 1963. p. 4371
15. RETIREMENT. Rep. Olsen discussed his bill H. R. 10706, to amend the Civil Service Retirement Act so as to provide for increases in annuities, eliminate

March 27, 1962

17. PERISHABLE COMMODITIES. The Agriculture Committee reported with amendments S. 1037, to amend the provisions of the Perishable Agricultural Commodities Act regarding fees, oral hearings, and relicensing (H. Rept. 1546). p. 5019
18. YOUTH CONSERVATION CORPS. The Education and Labor Committee reported without amendment H. R. 10682, to authorize the establishment of a Youth Conservation Corps (H. Rept. 1540). p. 5019
19. LIVESTOCK. Received from this Department a proposed bill to amend section 6 of the act of May 29, 1884, to authorize the Secretary of Agriculture to provide for the interstate movement of certain diseased livestock and poultry, which are now prohibited movement under the act (21 U.S.C. 115), when he finds that such action will not endanger the livestock or poultry of the U. S.; to Agriculture Committee. p. 5019
20. MINERALS. The Subcommittee on Mines and Mining of the Interior and Insular Affairs Committee voted to report to the full committee H. R. 10566, to provide for the withdrawal and orderly disposition of mineral interests in certain public lands in Pima County, Ariz. p. D226
21. TOMATOES. The Select Committee on Small Business issued a report on minority views on small business problems in the tomato industry (H. Rept. 1471, part 2). p. 5019
22. APPROPRIATIONS. The Appropriations Committee was granted until midnight Fri. to file a report on the second supplemental appropriation bill for 1962. p. 4941
23. PUBLIC WORKS. Rep. Cramer criticized H. R. 10318, the proposed Standby Capital Improvements Act of 1962, and inserted an editorial that "properly points out numerous weaknesses in the proposal and, in particular, the fact that it is a warmed-over version of a program that was discarded 30 years ago, known as the WPA." pp. 5006-7
24. FOREIGN TRADE. Rep. Thompson, N. J., said "the European Common Market undoubtedly is one of the greatest challenges to historic American trade policies and practices which has developed in the entire history of our country," and inserted an address discussing the proposed Trade Expansion Act of 1962. pp. 5014-8
Received from Treasury a proposed bill to amend the Tariff Act of 1930, as amended, to provide for reimbursement of services performed at foreign stations; to Ways and Means Committee. p. 5019
25. LEGISLATIVE PROGRAM. Rep. Albert announced the following legislative program: Mon., H. R. 10162, to amend the Bretton Woods Agreements Act, H. R. 10788, relating to the regulation of textile imports, H. R. 946, to provide disaster loans for oyster planters, S. 860, on livestock and poultry diseases, H. R. 10062, to extend the application of certain laws to American Samoa, and H. R. 1171, regarding the public use of fish and wildlife areas; Tues., the second supplemental appropriation bill, and H. R. 10700, to amend the Peace Corps Act. p. 5004
26. ADJOURNED until Mon., Apr. 2. p. 5019

ITEMS IN APPENDIX

27. YOUTH CONSERVATION. Extension of remarks of Rep. Moss favoring the establishment of a Youth Conservation Corps and inserting an evaluation of the Civilian Conservation Corps. pp. A2461-3
28. ST. LAWRENCE SEAWAY. Extension of remarks of Rep. Van Zandt criticizing the seaway program and stating "let us now recognize the St. Lawrence Seaway for the 'white elephant' that it is." pp. A2464-6
29. FOREIGN TRADE. Extension of remarks of Rep. Diggs inserting an article, "America Can't Compete? -- A Myth," analyzing the foreign trade issue. pp. A2469-70
30. ELECTRIC COOPERATIVES. Extension of remarks of Rep. Sikes inserting the testimony of John R. Pentecost before the House Agriculture Committee urging the committee to continue to authorize REA to make loans for generation and transmission of electric power for rural America. p. A2480
31. PUBLIC WORKS. Extension of remarks of Rep. Bray inserting an article voicing skepticism of the proposed public works program. p. A2486
32. FARM LABOR. Extension of remarks of Rep. Santangelo inserting an article, "The Mexican Farm Labor Importation Program -- Review and Reform." pp. A2488-91

BILLS INTRODUCED

33. FLOOD CONTROL. H. R. 11004, by Rep. Boggs, to amend the River and Harbor Act of 1945; to Public Works Committee.
34. CONTRACTS. H. R. 11008, by Rep. Gonzalez (by request), to amend the Small Business Act to provide that the program under which Government contracts are set aside for small-business concerns shall not apply in the case of contracts for maintenance, repair, or construction; to Banking and Currency Committee.
35. DISASTER LOANS. H. R. 11012, by Rep. Rodino, to amend the Small Business Act to make it clear that disaster loans in cases of flood or other catastrophe may be made with respect to property of any type (including summer homes as well as other residential property); to Banking and Currency Committee.
36. PATENTS. H. R. 11015, by Rep. Willis, to provide for public notice of settlements in patent interferences; to Judiciary Committee.
37. SMALL BUSINESS. H. R. 11020, by Rep. Spence, "to amend the Small Business Act"; to Banking and Currency Committee. Remarks of author. p. 4999
38. ELECTRIFICATION. H. R. 11021, by Rep. Derwinski, to provide for the application of power revenues from reclamation projects to the reduction of the public debt; to Interior and Insular Affairs.
39. EMPLOYMENT. H. R. 11026, by Rep. Shelley, to prohibit discrimination in employment in certain cases because of race, religion, color, national origin, ancestry, or age; to Education and Labor Committee. Remarks of author. pp. 5012-3

AMENDMENTS TO PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

MARCH 29, 1962.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COOLEY, from the Committee on Agriculture, submitted the following

R E P O R T

[To accompany S. 1037]

The Committee on Agriculture, to whom was referred the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Beginning on page 1, line 3, strike out the remainder of page 1 and through line 4 on page 2, and insert:

That paragraphs (6) and (7) of the first section of the Perishable Agricultural Commodities Act, 1930 (7. U.S.C. 499a), are amended to read as follows:

“(6) The term ‘dealer’ means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a ‘dealer’ in respect to sales of any such commodity of his own raising (B) no person buying any such commodity solely for sale at retail shall be considered as a ‘dealer’ until the invoice cost of his purchases of such commodity in any calendar year are in excess of \$100,000; and (C) no person buying any such commodity for canning and/or processing within the State where grown shall be considered a ‘dealer’ whether or not the canned or

processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph 4 of this section. Any person not considered as a 'dealer' under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a 'dealer';

"(7) The term 'broker' means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a 'broker' if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables;

SEC. 2. The first section of such Act (7 U.S.C. 499a) is further amended by adding at the end thereof the following new paragraphs.

"(9) The term 'responsibly connected' means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

"(10) The terms 'employ' and 'employment' mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment."

Renumber succeeding sections to conform.

On page 2, line 13, insert a period after "\$50" and strike out the remainder of the sentence.

GENERAL STATEMENT

The Perishable Agricultural Commodities Act was enacted in 1930 and has continued in effect without substantial amendment. Its purpose is to suppress unfair and fraudulent practices in the marketing of fresh and frozen fruits and vegetables in interstate commerce. The act accomplishes this by (1) requiring that commission merchants, dealers, and brokers subject to the act obtain from the Secretary a license for which they must pay an annual fee and which is revokable for cause; (2) requiring that licensees keep such accounts and records as will show fully and correctly all transactions; (3) prohibiting fraudulent accounting, unjustifiable rejections or failures to deliver, and misbranding and other misrepresentations; and (4) authorizing the investigation of complaints, the issuance of reparation orders, the publication of fact concerning violations, the refusal, suspension, or revocation of licenses.

The cost of administering the act is paid from license fees collected from the some 25,000 licensees who are presently subject to its provisions. The license fee has been set at \$25 for the past several years,

but for the past 2 years the cost of administration has exceeded the amount available from fees. One of the major purposes of this bill is to increase the maximum allowable fee to \$50, with the understanding that advances will be made in the cost of licenses only at such times and to such extent as may be reasonably necessary to continue to make this a self-supporting operation.

Testimony of the shippers, brokers, wholesalers, and other elements of the trade in fresh and frozen fruits and vegetables who have been operating under this act is enthusiastically and almost unanimously in its support. It has brought a high degree of stability and responsibility to an industry which had frequently been beset by instability and irresponsibility. It is regarded as one of our most successful regulatory programs.

HISTORY OF THE BILL

On February 28, 1961, H.R. 5023 (identical with the Senate bill S. 1037 herewith reported) was introduced in the House of Representatives and on April 27, 1961, a report was received from the Secretary of Agriculture recommending the enactment of the bill. Hearings on the bill were conducted by the Domestic Marketing Subcommittee on July 25 and August 9 and 10, 1961. At these hearings, spokesmen for the Department of Agriculture, the American Farm Bureau Federation, the National Council of Farmer Cooperatives, the National Potato Council, and the United Fresh Fruit & Vegetable Association appeared in support of the bill.

Spokesmen for the National Food Brokers Association and the National Association of Retail Grocers of the United States appeared in general support of the legislation but urged substantial amendments thereto. The amendment proposed by the National Food Brokers Association would have exempted from licensing under the act those food brokers who represent vendors and who are required to be licensed solely because they deal in frozen fruits or vegetables. The amendment proposed by the National Association of Retail Grocers would have exempted from licensing under the act retail grocers who purchased 90 percent or more of their fresh and frozen fruits and vegetables from licensed wholesalers.

The committee felt that the proposed amendments merited further study and, accordingly, on September 7, 1961, the committee deferred action on the bill and requested the Department of Agriculture to conduct a further study of the subject of the inclusion of brokers and retailers in the jurisdiction of the act.

The report of that study was transmitted to the committee by the Department of Agriculture on January 12, 1962, and on February 26, 1962, the subcommittee conducted further hearings on the amendments submitted by the two organizations referred to above. In the meantime, the Senate had passed its similar bill (S. 1037) so that in lieu of the House bill, the committee herewith reports, with amendments, the Senate bill.

COMMITTEE AMENDMENTS

The amendments adopted by the committee will exclude from the licensing requirement of the act (1) brokers who are now required to

be licensed solely because they deal in frozen fruits or vegetables and (2) retailers who purchase less than \$100,000 worth of commodities covered by the act in any calendar year.

SHORT EXPLANATION

Other than the committee amendments noted above, the bill would amend the Perishable Agricultural Commodities Act to:

1. Improve and clarify provisions dealing with the eligibility for license, or for employment by licensees, of persons guilty of specified acts and persons affiliated with them;

(2) Authorizes an increase of license fees from \$25 per year to such higher rate not above \$50 as may prove necessary;

(3) Eliminate the Export Apple and Pear Act from the acts administered with license fees received under the Perishable Agricultural Commodities Act; and authorize appropriations to carry out the Export Apple and Pear Act;

(4) Regulate the use of trade names by licensees to prevent deception;

(5) Provide that opportunity for an oral hearing need not be provided in reparation cases unless the amount in dispute exceeds \$1,500 (instead of \$500);

(6) Make it clear that in an appeal from a reparation order bond must be filed within 30 days after entry of the order and provide that the bond shall be in cash, negotiable securities, or the undertaking of a recognized surety company; and

(7) Defer license suspension in case of appeal until all judicial appeals have ended.

SECTION-BY-SECTION ANALYSIS

Section 1. Committee amendments

The first section of the bill embodies the committee amendments described above. It also writes into the definition of "dealer" the meaning of the word "carloads" as presently provided in a separate clause at the end of the subsection and defined in regulations of the Secretary.

Section 2. Definitions

This section of the bill adds to the first section of the Perishable Agricultural Commodities Act definitions of "responsibility connected" and "employ" or "employment." These new definitions are necessary by reason of the rewriting of the provisions relating to sections 4(b), 4(c), and 8(b) of the act. These terms, although heretofore used in the act, were not defined. Their definition will give them specific meaning, thus avoiding possible confusion as to interpretations. The defining of "employ" and "employment" to include ownership or self-employment makes it clear that the provisions of section 8(b), as amended, apply to owners, as well as others employed in the business. To fail to include owners would defeat the whole purpose of this provision of the act. Heretofore the phrase used in connection with section 8(b) was "employ in a responsible position" and considerable difficulty has been encountered in delineating what constituted a responsible position.

Section 3. License fees

Section 3 would delete the reference to the Export Apple and Pear Act in section 3(b) of the act so that the cost of administering this unrelated statutory program would not be charged against the Perishable Agricultural Commodities Act fund and will hereafter be financed through appropriated funds like unrelated programs of the Department. Authorization for appropriations to cover the cost of administering the Export Apple and Pear Act is contained in section 11 of the bill.

Section 3 also amends section 3(b) of the act to authorize the Secretary of Agriculture to fix license fees in such amount as he determines to be necessary to meet the reasonably anticipated expenses of administration of the Perishable Agricultural Commodities Act and the act of March 3, 1927 (the Produce Agency Act), not to exceed \$50 per year. The present statutory maximum is \$25. In its report and in testimony on the bill, the Department pointed out that under the current \$25 fee administrative expenses have exceeded collections for the past 2 years, necessitating withdrawals from the limited reserve fund which has been built up over a period of years. The Department advises further that failure to provide an increase in license fees will result in a sharp curtailment of enforcement operations. While current costs will necessitate increasing the fee to approximately \$35, provision is made for further increases to a maximum fee of \$50 if increases in operating costs occur in the future. Some concern has been expressed that the \$50 maximum fee will immediately become the current fee. In approving the increase in the maximum license fee from \$25 to \$50 per year, it is the committee's understanding that only a portion of such increase is needed to meet current operating expenses. Therefore, it will not be necessary for the Department to increase the fee to the authorized maximum of \$50 immediately following the enactment of this bill but, instead, it will establish a fee of about \$35 per year. Future increases should also be determined by the level of revenue in relation to the administrative costs. Sound and effective administration should not be sacrificed but increments in the fees should be carefully weighed to avoid any unnecessary expense on the part of the industry. The bill provides that the Secretary must give public notice and an opportunity for interested persons to file their views on or objections to any proposed increase prior to the effective date of such increase.

Section 4. Trade names

Section 4 of the bill adds a new subsection (c) to section 3 of the act which makes it clear that a licensee may conduct his business under more than one trade name or change the trade name under which the business is conducted without requiring an additional or new license. It also will vest the Secretary of Agriculture with authority to disapprove the use by a licensee of a trade name which would be deceptive, misleading, or confusing to the trade. After notice and opportunity for hearing a license could be suspended for not to exceed 90 days if the licensee continued to use a trade name which had been disapproved by the Secretary. It also authorizes refusal of license where the proposed trade name of the applicant would be deceptive, misleading, or confusing to the trade if used by such applicant.

Section 5. Bankruptcy

Section 5 amends section 4(a) of the act to provide for the automatic termination of a license upon the licensee being discharged as a bankrupt. An applicant for a license who has been adjudicated or discharged within the past 3 years at present is required to furnish a surety bond before receiving a license. Present law does not provide for license termination solely on account of bankruptcy.

Section 6. License refusal

Section 6 of the bill completely revises section 4(b) of the act, which relates to the grounds upon which an application for license will be denied. It directs the Secretary to refuse a license to any applicant if (1) the applicant, (2) any person responsibly connected with the applicant, or (3) any partnership, corporation, or association with whom any person described in (1) or (2) was responsibly connected has, within 2 years prior to the license application (a) had his license revoked,¹ (b) been found guilty of flagrant or repeated violation of section 2 of the act (unless his license was suspended for such violation and such suspension is no longer in effect), (c) been convicted of violating the act of March 3, 1927, relating to the prevention or destruction and dumping of farm produce, or (d) (except in case of bankruptcy and subject to the right of appeal) had a reparation award issued against him which remains unpaid.

This differs from the existing provisions of sections 4(b) and 4(c) in that—

(1) Responsible connection by the applicant (or one of the applicant's officers, directors, or members, or a holder of more than 10 percent of the applicant's stock) with a person guilty of the specified conduct would require refusal of a license, without showing (as is now required) that the applicant, officer, director, or member was responsible in whole or in part for such conduct.

(2) "Responsible connection," as defined in the bill, covers a somewhat different relationship than that covered by various provisions of existing sections 4(b) and 4(c). For instance, under the bill the Secretary would be required to refuse a license to a corporation applicant if the holder of more than 10 percent of the stock had had a license revoked within 2 years prior to the application. This would not be required under existing section 4(b), although such refusal would be discretionary under section 4(d) if the Secretary found that such stockholder had engaged in prohibited practices, and that by reason of such conduct the applicant was unfit to be licensed.

(3) Violation of section 14(b) of the act relating to fraudulent actions with respect to inspection certificates is omitted from the causes requiring refusal of a license, since grading programs are now carried on under the Agricultural Marketing Act of 1946, which provides for its own criminal penalties and for administrative action leading to refusal of inspection service.

(4) The bonding provisions now contained in section 4(b) would be omitted from section 4(b), to be covered in modified form by section 4(c) of the act, as amended by section 6 of the bill.

¹ Also if his license is currently under suspension.

As will be noted in the explanation of section 6 of the bill, sections 5 and 6 of the bill provide for more uniform periods of license ineligibility than are provided under existing law.

Except as noted above, the grounds for refusal of a license remain the same under the proposed amendment as under existing sections 4(b) and 4(c) of the act.

Section 7. Period of license ineligibility

Section 7 of the bill amends section 4(e) of the act to establish more equitable and realistic standards with respect to the period of withholding of license and the conditions for granting of license to persons who have been ineligible under section 4(b). At the end of the 2-year ineligibility period specified in section 4(b) a license may be issued if the applicant furnishes a bond covering compliance with the act and assuring payment of reparation awards for transactions occurring within 4 years following issuance of the license. Without such bond, the license may not be issued for an additional year, making the total period of ineligibility 3 years. Under the present provisions of the act there is no uniformity. This leads to inequitable results. At present a person whose license has been revoked for flagrant violations can be relicensed with a bond after the expiration of 1 year; whereas a person who has merely failed to pay a reparation award in any amount, and even in the absence of any finding of flagrant violation, cannot be relicensed for a period of 2 years regardless of the reason for his nonpayment, short of bankruptcy.

Section 8. Hearings in minor cases

Section 8 of the bill amends subsections (e) and (d) of section 6 of the act by striking out \$500 and substituting \$1,500, thus providing that on any claim for reparation under the act involving \$1,500 or less, a hearing need not be held and the matter can be disposed of under a shortened procedure through affidavits and depositions unless the Secretary determines that a hearing is necessary to insure justice; whereas at present, notice and opportunity for hearing must be afforded on all claims for reparation exceeding \$500. This amendment can eliminate approximately 50 percent of the hearings, thereby expediting the disposition of reparation proceedings and saving the parties, as well as the Government, substantial amounts of money in cost of hearings.

Section 9. Bond on appeal

Section 9 amends section 7(e) of the act to make it clear that an appeal from a reparation award of the Secretary shall not be effective as an appeal, and therefore not a matter within the jurisdiction of the district court of the United States in which the petition is filed, unless the required bond is filed with the court within 30 days from and after the date of the Secretary's order. It is also provided that the required bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a recognized surety company.

Section 10. Stay of license termination on appeal

Section 10 amends section 7(d) of the act to correct a deficiency relating to automatic suspension of license following a judgment of

the district court on appeal from an order of the Secretary. The act now provides that the license shall be automatically suspended after 10 days from the date of judgment unless prior thereto the judgment of the court has been satisfied, and makes no provision for withholding the suspension if the judgment of the district court is appealed to the court of appeals. The amendment takes care of this point by providing that the license will not be suspended while a stay of the judgment is in effect.

Section 11. Employment of certain persons by licensees

Section 11 amends section 8(b) of the act to clarify and make more effective the provisions of the act with respect to employment by licensees of persons who have been found to have violated the act or failed to pay reparation awards under the act, as well as persons responsibly connected with such persons. It prohibits the employment of these persons by a licensee without the approval of the Secretary and prescribes standards with respect to the conditions for such approval, authorizing the approval of such employment upon the furnishing and maintaining of a surety bond satisfactory to the Secretary as assurance that the licensee's business will be conducted in conformance with the act and all reparation awards paid. Employment under such conditions may be approved, with respect to unpaid reparation awards, at any time and, with respect to persons found guilty of flagrant or repeated violations of the act, after 1 year, with authority in the Secretary to approve employment of the latter persons without a surety bond after the expiration of 2 years. It is further provided that the Secretary may increase the amount of bond required and that failure to comply with his order in that regard shall result in automatic termination of approval. Any licensee hiring a person without the approval of the Secretary in violation of this provision, after notice and opportunity for hearing, may have his license suspended or revoked. At present the act applies only to the employment of a person in a responsible position. This has caused serious difficulties due to the problem of delineating what constitutes a responsible position under all circumstances and the difficulty of ascertaining the true nature of the employee's relationship with the licensee. Under the present provisions of the act the restrictions against employment are directed specifically to persons whose licenses had been revoked or suspended and persons responsibly connected therewith. The bill extends such restrictions to persons whose licenses could have been revoked or suspended if they had had active licenses. As amended, section 8(b) would prohibit employment of persons covered by it unless such employment is approved by the Secretary; whereas at present it prohibits such employment only after notice by the Secretary.

Section 11 extends section 8(b) of the act to cover employment of "persons" rather than "individuals." This would extend it to partnerships, associations, and corporations, which under the new definition of "employment" may be regarded as self-employed. The need for this change may be illustrated by an actual case where a reparation order was issued against a partnership composed of two corporations

and an individual. One of the corporations was a licensee in its own right and no means were available to prevent it from continuing operations as a licensee. Under section 8(b) as it would be amended by the bill, such continuation as a licensee could be prevented.

Section 12. Export Apple and Pear Act appropriations

Section 12 amends the Export Apple and Pear Act by adding a new section 10, authorizing appropriations for the administration of such act. This amendment is related to the amendment contained in section 2 of the bill, which deletes the present authorization for the use of Perishable Agricultural Commodities Act funds to cover the cost of administering the Export Apple and Pear Act.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when used in this Act—

(1) The term "person" includes individuals, partnerships, corporations, and associations;

(2) The term "Secretary" means the Secretary of Agriculture;

(3) The term "interstate or foreign commerce" means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, or the District of Columbia but through any place outside thereof; or within the District of Columbia;

(4) The term "perishable agricultural commodity"—(A) means any of the following, whether or not frozen or packed in ice: Fresh fruits and fresh vegetables of every kind and character; and (B) includes cherries in brine as defined by the Secretary in accordance with trade usages;

(5) The term "commission merchant" means any person engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission, or for or on behalf of another;

(6) The term "dealer" means any person engaged in the business of buying or selling in [carloads] *wholesale or jobbing quantities, as defined by the Secretary*, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a "dealer" in respect to sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a "dealer" [in respect to any such commodity in any calendar year] until the invoice cost of his purchases of such commodity [in carloads in such year are in excess of twenty] *in any calendar year are in excess of \$100,000*; and (C) no

person buying any such commodity for canning and/or processing within the State where grown shall be considered a "dealer" whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph 4 of this section. Any person not considered as a "dealer" under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a "dealer" [As used in this paragraph, the term "in carloads" includes wholesale or jobbing quantities as defined for any such commodity by the Secretary;];

(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, *except that no person shall be deemed to be a 'broker' if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables;*

(8) A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another State, or for processing within the State and the shipment outside the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act;

(9) *The term "responsibly connected" means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;*

(10) *The terms "employ" and "employment" mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.*

UNFAIR CONDUCT

SEC. 2. It shall be unlawful in or in connection with any transaction in interstate or foreign commerce—

(1) For any commission merchant, dealer, or broker to engage in or use any unfair, unreasonable, discriminatory, or deceptive practice in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled in interstate or foreign commerce;

(2) For any dealer to reject or fail to deliver in accordance with the terms of the contract without reasonable cause any perishable agricultural commodity bought or sold or contracted to be bought, sold, or consigned in interstate or foreign commerce by such dealer;

(3) For any commission merchant to discard, dump, or destroy without reasonable cause any perishable agricultural commodity received by such commission merchant in interstate or foreign commerce;

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction;

(5) For any commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or State, country, or region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce;

(6) For any commission merchant, dealer, or broker, for a fraudulent purpose, to remove, alter, or tamper with any card, stencil, stamp, tag, or other notice placed upon any container or railroad car containing any perishable agricultural commodity, if such card, stencil, stamp, tag, or other notice contains a certificate or statement under authority of any Federal or State inspector or in compliance with any Federal or State law or regulation as to the grade or quality of the commodity contained in such container or railroad car or the State or country in which such commodity was produced;

(7) For any commission merchant, dealer, or broker, without the consent of an inspector, to make, cause, or permit to be made any change by way of substitution or otherwise in the contents of a load or lot of any perishable agricultural commodity after it has been officially inspected for grading and certification, but this shall not prohibit re-sorting and discarding inferior produce.

LICENSES

SEC. 3. (a) After the expiration of six months after the approval of this Act no person shall at any time carry on the business of a commission merchant, dealer, or broker without a license valid and effective at such time. Any person who violates any provision of this

subdivision shall be liable to a penalty of not more than \$500 for each such offense and not more than \$25 for each day it continues, which shall accrue to the United States and may be recovered in a civil suit brought by the United States. Any person violating this provision may, upon a showing satisfactory to the Secretary of Agriculture, or his authorized representative, that such violation was not willful but was due to inadvertence, be permitted by the Secretary, or such representative, to settle his liability in the matter by the payment of the fees due for the period covered by such violation and an additional sum, not in excess of \$25, to be fixed by the Secretary of Agriculture or his authorized representative. Such payment shall be deposited in the Treasury of the United States in the same manner as regular license fees.

(b) Any person desiring any such license shall make application to the Secretary. The Secretary may by regulation prescribe the information to be contained in such application. Upon the filing of the application, and annually thereafter, the applicant shall pay [a fee not to exceed \$25 which shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the "Perishable Agricultural Commodities Act fund", which shall be available for all expenses necessary to the administration of this Act, the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), and the Export Apple and Pear Act, approved June 10, 1933 (7 U.S.C. 581-589):] *such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), but in no event shall such fee exceed \$50. Such fee when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the "Perishable Agricultural Commodities Act Fund", which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above: Provided, That financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years shall be included in the budget as submitted to the Congress annually. The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase.*

(c) *A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant.*

Sec. 4. (a) Whenever an applicant has paid the prescribed fee the Secretary, except as provided elsewhere in this Act, shall issue to such applicant a license, which shall entitle the licensee to do business as a commission merchant and/or dealer and/or broker unless and until it is suspended or revoked by the Secretary in accordance with the provisions of this Act, or is automatically suspended under section 7(d) of this Act, but said license shall automatically terminate on any anniversary date thereof unless the annual fee has been paid: *Provided*, That notice of the necessity of paying the annual fee shall be mailed at least thirty days before the anniversary date: *Provided further*, That if the annual fee is not paid by the anniversary date the licensee may obtain a renewal of that license at any time within thirty days by paying the fee provided in section 3(b), plus \$5 which shall be deposited in the Perishable Agricultural Commodities Act fund provided for by section 3(b): *And provided further*, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt.

(b) [The Secretary shall refuse to issue a license to an applicant (1) if he finds that the applicant has previously been responsible in whole or in part for any violation of the provisions of the Act for which a license of the applicant, or the license of any partnership, association, or corporation in which the applicant held any office or, in the case of a partnership, had any share or interest, was revoked under the provisions of section 8; or (2) if at any time within two years he has found after notice and hearing that said applicant was responsible in whole or in part for any flagrant or repeated violation of the provisions of section 2; or (3) if he finds, in case the applicant is a partnership, association or corporation, that any individual holding office or, in the case of a partnership, having any interest or share in the applicant, has previously been responsible in whole or in part for any violation of the provisions of the Act for which the license of such individual, or of any partnership, association, or corporation in which such person held any office, or, in the case of a partnership, had any share or interest, was revoked under the provisions of section 8; or (4) if at any time within two years he has found after notice and hearing, in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant was responsible in whole or in part for any flagrant or repeated violation of the provisions of section 2; or (5) if he finds that the applicant, subject to his right of appeal under section 7(c), has failed, except in case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual, or against a partnership of which he was a member, or an association or corporation in which he held any office, or, in case the applicant is a partnership, association, or corporation, that any individual holding any office or, in the case of a partnership, having any interest or share in the applicant, subject to his right of appeal under section 7(c), has failed, except in the case of bankruptcy, to pay within the time limit provided therein any reparation order which has been issued, within two years, against him as an individual or against a partnership of which he was a member, or an association or corporation in which he held any office. Notwithstanding all of the foregoing provisions of this paragraph, the Secretary, in the case of such appli-

cant, may issue a license if the applicant furnishes a bond or other satisfactory assurance that his business will be conducted in accordance with the provisions of the Act and that he will pay all reparation orders which may previously have been issued against him for violations, or which may be issued against him within two years following the date of the license, subject to his right of appeal under section 7(c), but such license shall not be issued before the expiration of one year from the date of revocation of license or from the date of the Secretary's finding that the applicant has been responsible, in whole or in part, for any flagrant or repeated violation of section 2. Such bond shall be in an amount sufficient in the judgment of the Secretary of Agriculture to insure payment of such reparation order;] *The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is a person who, or is or was responsibly connected with a person who—*

(A) *has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;*

(B) *within two years prior to the date of application has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;*

(C) *within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491-497), relating to the prevention of destruction and dumping of farm produce; or*

(D) *has failed, except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application.*

(c) [The Secretary shall refuse to issue a license to an applicant if he finds after notice and hearing that at any time within two years said applicant has been found guilty in a Federal court of having violated the provisions of the Act known as the Produce Agency Act (7 U.S.C., secs. 491-497), or of having violated section 14(b) of this Act, or, in case the applicant is a partnership, that any member of the partnership was found guilty within two years of having violated the Produce Agency Act, or section 14(b) of this Act, or, if the applicant is an association or corporation, that any officer or any person holding a responsible position therein has been found within two years to have been guilty of violating the Produce Agency Act or section 14(b) of this Act;] *Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order*

of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided;

(d) The Secretary may withhold the issuance of a license to an applicant, for a period not to exceed thirty days pending an investigation, for the purpose of determining (a) whether the applicant is unfit to engage in the business of a commission merchant, dealer, or broker because the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, prior to the date of the filing of the application engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal court, or (b) whether the application contains any materially false or misleading statement or involves any misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee of the applicant. If after investigation the Secretary believes that the applicant should be refused a license, the applicant shall be given an opportunity for hearing within sixty days from the date of the application to show cause why the license should not be refused. If after the hearing the Secretary finds that the applicant is unfit to engage in the business of a commission merchant, dealer, or broker because the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, prior to the date of the filing of the application engaged in any practice of the character prohibited by this Act or was convicted of a felony in any State or Federal court, or because the application contains a materially false or misleading statement made by the applicant or by its representative on its behalf, or involves a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, the Secretary may refuse to issue a license to the applicant;

(e) The Secretary may refuse to issue a license to an applicant if he finds that the applicant, or in case the applicant is a partnership, any general partner, or in case the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, has, within three years prior to the date of the application, been adjudicated or discharged as a bankrupt, or was a general partner of a partnership or officer or holder of more than 10 per centum of the stock of a corporation adjudicated or discharged as a bankrupt, unless the applicant furnishes a bond of such nature and amount as may be determined by the Secretary or other assurance satisfactory to the Secretary that the business of the applicant will be conducted in accordance with this Act.

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LIABILITY TO PERSON DAMAGED

SEC. 5. (a) If any commission merchant, dealer, or broker violates any provision of section 2 he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

(b) Such liability may be enforced either (1) by complaint to the Secretary as hereinafter provided, or (2) by suit in any court of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this Act are in addition to such remedies.

COMPLAINT AND INVESTIGATION

SEC. 6. (a) Any person complaining of any violation of any provision of section 2 by any commission merchant, dealer, or broker may, at any time within nine months after the cause of action accrues, apply to the Secretary by petition, which shall briefly state the facts, whereupon, if, in the opinion of the Secretary, the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Secretary to the commission merchant, dealer, or broker, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be prescribed by the Secretary.

(b) Any officer or agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory and any employee of the United States Department of Agriculture or any interested person may file, in accordance with rules and regulations of the Secretary, a complaint of any violation of any provision of this Act by any commission merchant, dealer, or broker and may request an investigation of such complaint by the Secretary.

(c) If there appear to be, in the opinion of the Secretary, any reasonable grounds for investigating any complaint made under this section, the Secretary shall investigate such complaint and may, if in his opinion the facts warrant such action, have said complaint served by registered mail or otherwise on the person concerned and afford such person an opportunity for a hearing thereon before a duly authorized examiner of the Secretary in any place in which the said person is engaged in business: *Provided*, That in complaints wherein the amount claimed as damages does not exceed the sum of **[\$500]** \$1,500 a hearing need not be held and proof in support of the complaint and in support of respondent's answer may be supplied in the form of depositions or verified statements of fact;

(d) After opportunity for hearing on complaints where the damages claimed exceed the sum of **[\$500]** \$1,500 has been provided or waived and on complaints where damages claimed do not exceed the sum of **[\$500]** \$1,500 not requiring hearing as provided herein, the Secretary shall determine whether or not the commission merchant, dealer, or broker has violated any provision of section 2;

(e) In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and

any reparation award that may be issued by the Secretary of Agriculture against the complainant on any counter claim by respondent: *Provided*, That the Secretary shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

REPARATION ORDER

SEC. 7. (a) If after a hearing on a complaint made by any person under section 6, or without hearing as provided in section 6, paragraphs (c) and (d), or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Secretary determines that the commission merchant, dealer, or broker has violated any provision of section 2, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Secretary under such rules and regulations as he shall prescribe, unless the respondent has already made reparation to the person complaining, may issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination. The remaining disputed amount shall be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Secretary with respect to the undisputed sum;

(b) If any commission merchant, dealer, or broker does not pay the reparation award within the time specified in the Secretary's order, the complainant, or any person for whose benefit such order was made, may within three years of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages, except that the findings and orders of the Secretary shall be prima-facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit;

(c) Either party adversely affected by the entry of a reparation order by the Secretary may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United

States for the district in which said hearing was held: *Provided*, That in cases handled without a hearing in accordance with paragraphs (c) and (d) of section 6 or in which a hearing has been waived by agreement of the parties, appeal shall be to the district court of the United States for the district in which the party complained against is located. **[Such appeal shall be perfected by the filing of a notice thereof together with a petition in duplicate which shall recite prior proceedings before the Secretary, and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with the clerk of said court with proof of service thereof upon the adverse party, together with a bond in double the amount of the reparation award conditioned upon the payment of the judgment entered by the court plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail.]** *Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States.* The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima facie evidence of the facts therein stated. Appellee shall not be liable for costs in said court and if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court;

(d) Unless the licensee against whom a reparation order has been issued shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order his license shall be suspended automatically at the expiration of such five-day period until he shows to the satisfaction of the Secretary that he has paid the amount therein specified with interest thereon to date of payment: *Provided*, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of **[ten]** *thirty* days from the date of the judgment on the

appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

SUSPENSION AND REVOCATION OF LICENSE

SEC. 8. (a) Whenever (a) the Secretary determines, as provided in section 6, that any commission merchant, dealer, or broker has violated any of the provisions of section 2, or (b) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 14(b) of this Act, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may by order revoke the license of the offender;

(b) [The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any commission merchant, dealer, or broker who, after the date given in such notice, continues to employ in any responsible position any individual whose license has been revoked or is under suspension or who was responsibly connected with any firm, partnership, association, or corporation whose license has been revoked or is under suspension. Employment of an individual whose license has been revoked or is under suspension for failure to pay a reparation award or who was responsibly connected with any firm, partnership, association, or corporation whose license has been revoked or is under suspension for failure to pay a reparation award after one year following the revocation or suspension of any such license may be permitted by the Secretary upon the filing by the employing licensee of a bond, of such nature and amount as may be determined by the Secretary, or other assurance satisfactory to the Secretary that its business will be conducted in accordance with the provisions of this Act;] Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7 (c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The

Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section;

(c) If, after a license shall have been issued to an applicant, the Secretary believes that the license was obtained through a false or misleading statement in the application therefor or through a misrepresentation, concealment, or withholding of facts respecting any violation of the Act by any officer, agent, or employee, he may, after thirty days' notice and an opportunity for a hearing, revoke said license, whereupon no license shall be issued to said applicant or any applicant in which the person responsible for such false or misleading statement or misrepresentation, concealment, or withholding of facts is financially interested, except under the conditions set forth in paragraph (b) of section 4;

(d) In addition to being subject to the penalties provided by section 3(a) of this Act, any commission merchant, dealer, or broker who engages in or operates such business without a valid and effective license from the Secretary shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States for an injunction to restrain such defendant from further continuing so to engage in or operate such business, and, if the court shall find that the defendant is continuing to engage in such business without a valid and effective license, the court shall issue an injunction to restrain such defendant from continuing to engage in or to operate such business without such license.

ACCOUNTS AND RECORDS

SEC. 9. Every commission merchant, dealer, and broker shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stock-holding or otherwise. If such accounts, records, and memoranda are not so kept, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days.

EFFECTIVE DATE AND FINALITY OF ORDER

SEC. 10. Any order of the Secretary under this Act other than an order for the payment of money shall take effect within such reasonable time, not less than ten days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, accordingly as it is prescribed in the order, unless such order is suspended, modified, or set aside by the Secretary or is suspended, modified, or set aside by a court of competent jurisdiction. Any such order of the Secretary, if regularly made, shall be final, unless before the date prescribed for its taking effect application is made to a court of competent jurisdiction by the commission merchant, dealer, or

broker against whom such order is directed to have such order set aside or its enforcement, operation, or execution suspended or restrained.

INJUNCTIONS

SEC. 11. For the purposes of this Act the provisions of all laws relating to the suspending or restraining of the enforcement, operation, or execution, or the setting aside in whole or in part, of the orders of the Interstate Commerce Commission are made applicable to orders of the Secretary under this Act and to any person subject to the provisions of this Act.

GENERAL PROVISIONS

SEC. 12. The Secretary may report any violation of this Act for which a civil penalty is provided to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay. The costs and expenses of such proceedings shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 13. (a) The Secretary or his duly authorized agents shall have the right to inspect such accounts, records, and memoranda of any commission merchant, dealer, or broker as may be material (1) in the investigation of complaints under this Act, or (2) to the determination of ownership, control, packer, or State, country, or region of origin in connection with commodity inspections, or (3) to ascertain whether section 9 of this Act is being complied with, and if any such commission merchant, dealer, or broker refuses to permit such inspection, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender until permission to make such inspection is given. The Secretary or his duly authorized agents shall have the right to inspect any lot of any perishable agricultural commodity covered by this Act, and if any commission merchant, dealer, or broker having ownership of or control over such lot fails or refuses to authorize or allow such inspection, the Secretary may, after thirty days' notice and an opportunity for a hearing, publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days.

(b) The Secretary, or any officer or employee designated by him for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records, and memoranda as may be material for the determination of any complaint under this Act.

(c) In case of disobedience to a subpoena, the Secretary or any of his examiners may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of accounts, records, and memoranda. Any district court of the United States within the jurisdiction of which any hearing is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the Secretary or his examiner or to produce accounts, records, and memoranda if so ordered, or to give evidence touching any matter pertinent to any complaint; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(d) The Secretary may order testimony to be taken by deposition in any proceeding or investigation or incident to any complaint pending under this Act at any stage thereof. Such depositions may be taken before any person designated by the Secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce accounts, records, and memoranda in the same manner as witnesses may be compelled to appear and testify and produce accounts, records, and memoranda before the Secretary or any of his examiners.

(e) Witnesses summoned before the Secretary or any officer or employee designated by him shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like service in the courts of the United States.

(f) No person shall be excused from attending, testifying, answering any lawful inquiry, or deposing, or from producing any documentary evidence, before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary or any such officer or employee, in any cause or proceeding, based upon or growing out of any alleged violating of this Act, or upon the taking of any deposition herein provided for, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he is compelled under oath so to testify, or produce evidence, documentary or otherwise, before the Secretary or any officer or employee designated by him, in obedience to the subpoena of the Secretary, or any such officer or employee, or upon the taking of any such deposition, or in any such cause or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 14. (a) The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses

for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: And *provided further*, That official inspection certificates for fresh fruits and vegetables issued by the Secretary of Agriculture pursuant to any law shall be received by all officers and all courts of the United States, in all proceedings under this Act, and in all transactions upon contract markets under Commodities Exchange Act (7 U.S.C., Supp. 2, secs. 1 to 17(a)), as prima facie evidence of the truth of the statements therein contained;

(b) Whoever shall falsely make, issue, alter, forge, or counterfeit, or cause or procure to be falsely made, issued, altered, forged, or counterfeited, or willingly aid, cause, procure or assist in, or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate of inspection issued under authority of this Act, the Produce Agency Act of March 3, 1927 (7 U.S.C., secs. 491-497), or any Act making appropriations for the Department of Agriculture; or shall utter or publish as true or cause to be uttered or published as true any such false, forged, altered, or counterfeited certificate, for a fraudulent purpose, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for a period of not more than one year, or both, at the discretion of the court.

SEC. 15. The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act, and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, binding, telegrams, telephones, law books, books of reference, publications, furniture, stationery, office equipment, travel, and other supplies and expenses, including reporting services, as shall be necessary to the administration of this Act in the District of Columbia and elsewhere from the Perishable Agricultural Commodities Act fund provided for by section 3(b) and any supplements to such fund, and as may be appropriated for by Congress; and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose. This act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act; but it is intended that all such statutes shall remain in full force and effect except in so far only as they are inconsistent herewith or repugnant hereto.

SEC. 16. In construing and enforcing the provisions of this Act, the act, omission, or failure of any agent, officer, or other person acting for or employed by any commission merchant, dealer, or broker, within the scope of his employment or office, shall in every case be deemed the act, omission, or failure of such commission merchant, dealer, or broker as that of such agent, officer, or other person.

SEPARABILITY

SEC. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SHORT TITLE

SEC. 18. This Act may be cited as the "Perishable Agricultural Commodities Act, 1930."

SEC. 19. Any unexpended balances of appropriations for the current fiscal year, and any subsequent appropriations, made to carry out the acts referred to in section 3(b) hereof, may be deposited in the Perishable Agricultural Commodities Act fund.

ACT OF JUNE 10, 1933 (EXPORT APPLE AND PEAR ACT)

SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act.



87TH CONGRESS
2D SESSION

S. 1037

[Report No. 1546]

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 5, 1961

Referred to the Committee on Agriculture

MARCH 29, 1962

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

AN ACT

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the first section of the Perishable Agricultural Com-
4 modities Act, 1930 (7 U.S.C. 499a), is amended by adding
5 at the end thereof the following new paragraphs:

6 “(9) The term ‘responsibly connected’ means affiliated
7 or connected with a commission merchant, dealer, or broker
8 as (A) partner in a partnership, or (B) officer, director,
9 or holder of more than 10 per centum of the outstanding
10 stock of a corporation or association;

1 ~~“(10) The terms ‘employ’ and ‘employment’ mean~~
2 ~~any affiliation of any person with the business operations~~
3 ~~of a licensee, with or without compensation, including~~
4 ~~ownership or self-employment.”~~

5 *That paragraphs (6) and (7) of the first section of the*
6 *Perishable Agricultural Commodities Act, 1930 (7 U.S.C.*
7 *499a), are amended to read as follows:*

8 *“(6) The term ‘dealer’ means any person engaged in the*
9 *business of buying or selling in wholesale or jobbing quanti-*
10 *ties, as defined by the Secretary, any perishable agricultural*
11 *commodity in interstate or foreign commerce, except that (A)*
12 *no producer shall be considered as a ‘dealer’ in respect to*
13 *sales of any such commodity of his own raising; (B) no*
14 *person buying any such commodity solely for sale at retail*
15 *shall be considered as a ‘dealer’ until the invoice cost of his*
16 *purchases of such commodity in any calendar year are in*
17 *excess of \$100,000; and (C) no person buying any such com-*
18 *modity for canning and/or processing within the State where*
19 *grown shall be considered a ‘dealer’ whether or not the canned*
20 *or processed product is to be shipped in interstate or foreign*
21 *commerce, unless such product is frozen or packed in ice, or*
22 *consists of cherries in brine, within the meaning of paragraph*
23 *4 of this section. Any person not considered as a ‘dealer’*
24 *under clauses (A), (B), and (C) may elect to secure a*
25 *license under the provisions of section 3, and in such case*

1 and while the license is in effect such person shall be con-
2 sidered as a 'dealer';

3 “(7) The term ‘broker’ means any person engaged in the
4 business of negotiating sales and purchases of any perishable
5 agricultural commodity in interstate or foreign commerce for
6 or on behalf of the vendor or the purchaser, respectively,
7 except that no person shall be deemed to be a ‘broker’ if such
8 person is an independent agent negotiating sales for and on
9 behalf of the vendor and if the only sales of such commodities
10 negotiated by such person are sales of frozen fruits and
11 vegetables;”.

12 SEC. 2. The first section of such Act (7 U.S.C. 499a)
13 is further amended by adding at the end thereof the following
14 new paragraphs:

15 “(9) The term ‘responsibly connected’ means affiliated
16 or connected with a commission merchant, dealer, or broker
17 as (A) partner in a partnership, or (B) officer, director, or
18 holder of more than 10 per centum of the outstanding stock
19 of a corporation or association;

20 “(10) The terms ‘employ’ and ‘employment’ mean any
21 affiliation of any person with the business operations of a
22 licensee, with or without compensation, including ownership
23 or self-employment.”

24 SEC. 2 3. The third sentence of section 3 (b) of such Act
25 (7 U.S.C. 499c (b)) is amended to read as follows: “Upon

1 the filing of the application, and annually thereafter, the
2 applicant shall pay such fee as the Secretary determines
3 necessary to meet the reasonably anticipated expenses for
4 administering this Act and the Act to prevent the destruc-
5 tion or dumping of farm produce, approved March 3, 1927
6 (7 U.S.C. 491-497), but in no event shall such fee exceed
7 \$50 and, for a person buying perishable agricultural com-
8 modities solely for sale at retail, and for a person who is
9 subject to the Act solely because of his operations as a
10 broker of frozen fruits and vegetables, such fee shall not ex-
11 ceed \$25. Such fee, when collected, shall be deposited in the
12 Treasury of the United States as a special fund, without fiscal
13 year limitation, to be designated as the 'Perishable Agri-
14 cultural Commodities Act Fund', which shall be available for
15 all expenses necessary to the administration of this Act and
16 the Act approved March 3, 1927, referred to above: *Pro-*
17 *vided*, That financial statements prescribed by the Director
18 of the Bureau of the Budget for the last completed fiscal
19 year, and as estimated for the current and ensuing fiscal
20 years, shall be included in the budget as submitted to the
21 Congress annually. The Secretary shall give public notice
22 of any increase to be made in the annual fee prescribed
23 by him hereunder and shall allow a reasonable time prior

1 to the effective date of such increase for interested persons
2 to file their views on or objections to such increase.”

3 SEC. 3 4. Section 3 of such Act (7 U.S.C. 499c) is fur-
4 ther amended by adding at the end thereof the following new
5 subsection:

6 “(c) A licensee may conduct business in more than one
7 trade name or change the name under which business is con-
8 ducted without requiring an additional or new license. The
9 Secretary may disapprove the use of a trade name if, in his
10 opinion, the use of the trade name by the licensee would be
11 deceptive, misleading, or confusing to the trade, and the Sec-
12 retary may, after notice and opportunity for a hearing, sus-
13 pend for a period not to exceed ninety days the license of
14 any licensee who continues to use a trade name which the
15 Secretary has disapproved for use by such licensee. The
16 Secretary may refuse to issue a license to an applicant if he
17 finds that the trade name in which the applicant proposes to
18 do business would be deceptive, misleading, or confusing to
19 the trade if used by such applicant.”

20 SEC. 4 5. Section 4 (a) of such Act (7 U.S.C. 499d (a))
21 is amended by inserting before the period at the end thereof
22 “: *And provided further*, That the license of any licensee

1 shall terminate upon said licensee, or in case the licensee is a
2 partnership, any partner, being discharged as a bankrupt”.

3 SEC. 5 6. Section 4 (b) of such Act (7 U.S.C. 499d (b))
4 is amended to read as follows:

5 “(b) The Secretary shall refuse to issue a license to
6 an applicant if he finds that the applicant, or any person
7 responsibly connected with the applicant, is a person who, or
8 is or was responsibly connected with a person who—

9 “(A) has had his license revoked under the provi-
10 sions of section 8 within two years prior to the date of
11 the application or whose license is currently under sus-
12 pension;

13 “(B) within two years prior to the date of appli-
14 cation has been found after notice and opportunity for
15 hearing to have committed any flagrant or repeated
16 violation of section 2, but this provision shall not apply
17 to any case in which the license of the person found to
18 have committed such violation was suspended and the
19 suspension period has expired or is not in effect;

20 “(C) within two years prior to the date of the ap-
21 plication, has been found guilty in a Federal court of
22 having violated the provisions of the Act of March 3,
23 1927 (7 U.S.C. 491–497), relating to the prevention
24 of destruction and dumping of farm produce; or

25 “(D) has failed, except in the case of bankruptcy

1 and subject to his right of appeal under section 7 (c) ,
2 to pay any reparation order issued against him within
3 two years prior to the date of the application.”

4 SEC. 6 7. Section 4 (c) of such Act (7 U.S.C. 499d (c))
5 is amended to read as follows:

6 “ (c) Any applicant ineligible for a license by reason of
7 the provisions of subsection (b) of this section may, upon
8 the expiration of the two-year period applicable to him, be
9 issued a license by the Secretary if such applicant furnishes
10 a surety bond in the form and amount satisfactory to the
11 Secretary as assurance that his business will be conducted in
12 accordance with this Act and that he will pay all reparation
13 orders which may be issued against him in connection with
14 transactions occurring within four years following the
15 issuance of the license, subject to his right of appeal under
16 section 7 (c) . In the event such applicant does not furnish
17 such a surety bond, the Secretary shall not issue a license to
18 him until three years have elapsed after the date of the
19 applicable order of the Secretary or decision of the court on
20 appeal. If the surety bond so furnished is terminated for any
21 reason without the approval of the Secretary the license
22 shall be automatically canceled as of the date of such termina-
23 tion and no new license shall be issued to such person during
24 the four-year period without a new surety bond covering the
25 remainder of such period. The Secretary, based on changes

1 in the nature and volume of business conducted by a bonded
2 licensee, may require an increase or authorize a reduction in
3 the amount of the bond. A bonded licensee who is notified
4 by the Secretary to provide a bond in an increased amount
5 shall do so within a reasonable time to be specified by the
6 Secretary, and upon failure of the licensee to provide such
7 bond his license shall be automatically suspended until such
8 bond is provided.”

9 SEC. 7 8. Subsections (c) and (d) of section 6 of such
10 Act (7 U.S.C. 499f) are amended by striking out “\$500”
11 each place it appears and inserting in lieu thereof “\$1,500”.

12 SEC. 8 9. Section 7 (c) of such Act (7 U.S.C. 499g (c))
13 is amended by striking the second sentence thereof and sub-
14 stituting therefor the following: “Such appeal shall be per-
15 fected by the filing with the clerk of said court a notice of
16 appeal, together with a petition in duplicate which shall
17 recite prior proceedings before the Secretary and shall state
18 the grounds upon which petitioner relies to defeat the right
19 of the adverse party to recover the damages claimed, with
20 proof of service thereof upon the adverse party. Such appeal
21 shall not be effective unless within thirty days from and after
22 the date of the reparation order the appellant also files with
23 the clerk a bond in double the amount of the reparation
24 awarded against the appellant conditioned upon the pay-
25 ment of the judgment entered by the court, plus interest and

1 costs, including a reasonable attorney's fee for the appellee,
2 if the appellee shall prevail. Such bond shall be in the form
3 of cash, negotiable securities having a market value at least
4 equivalent to the amount of bond prescribed, or the under-
5 taking of a surety company on the approved list of sureties
6 issued by the Treasury Department of the United States."

7 SEC. 9 10. Section 7 (d) of such Act (7 U.S.C. 499g (d))
8 is amended by striking the proviso at the end of the section
9 and substituting therefor the following: "*Provided*, That if
10 on the appeal the appellee prevails or if the appeal is dis-
11 missed the automatic suspension of license shall become effec-
12 tive at the expiration of thirty days from the date of the
13 judgment on the appeal, but if the judgment is stayed by a
14 court of competent jurisdiction the suspension shall become
15 effective ten days after the expiration of such stay, unless
16 prior thereto the judgment of the court has been satisfied."

17 SEC. 10 11. Section 8 (b) of such Act (7 U.S.C. 499h
18 (b)) is amended to read as follows:

19 "(b) Except with the approval of the Secretary, no li-
20 censee shall employ any person, or any person who is or has
21 been responsibly connected with any person—

22 "(1) whose license has been revoked or is currently
23 suspended by order of the Secretary;

24 "(2) who has been found after notice and oppor-
25 tunity for hearing to have committed any flagrant or re-

1 peated violation of section 2, but this provision shall not
2 apply to any case in which the license of the person
3 found to have committed such violation was suspended
4 and the suspension period has expired or is not in effect;
5 or

6 “(3) against whom there is an unpaid reparation
7 award issued within two years, subject to his right of
8 appeal under section 7 (c) .

9 The Secretary may approve such employment at any time
10 following nonpayment of a reparation award, or after one
11 year following the revocation or finding of flagrant or
12 repeated violation of section 2, if the licensee furnishes and
13 maintains a surety bond in form and amount satisfactory to
14 the Secretary as assurance that such licensee’s business will
15 be conducted in accordance with this Act and that the
16 licensee will pay all reparation awards, subject to its right
17 of appeal under section 7 (c) , which may be issued against
18 it in connection with transactions occurring within four years
19 following the approval. The Secretary may approve em-
20 ployment without a surety bond after the expiration of two
21 years from the effective date of the applicable disciplinary
22 order. The Secretary, based on changes in the nature and
23 volume of business conducted by the licensee, may require
24 an increase or authorize a reduction in the amount of the
25 bond. A licensee who is notified by the Secretary to provide

1 a bond in an increased amount shall do so within a reason-
2 able time to be specified by the Secretary, and if the li-
3 censee fails to do so the approval of employment shall auto-
4 matically terminate. The Secretary may, after thirty days'
5 notice and an opportunity for a hearing, suspend or revoke
6 the license of any licensee who, after the date given in such
7 notice, continues to employ any person in violation of this
8 section."

9 SEC. ~~44~~ 12. The Act of June 10, 1933 (48 Stat. 123; 7
10 U.S.C. 581-589), popularly known as the Export Apple
11 and Pear Act, is amended by adding at the end thereof a
12 new section as follows:

13 "SEC. 10. There are hereby authorized to be appropri-
14 ated such sums as may be necessary for the administration
15 of this Act."

Passed the Senate September 1, 1961.

Attest:

FELTON M. JOHNSTON,

Secretary.

87TH CONGRESS
2^D SESSION

S. 1037

[Report No. 1546]

AN ACT

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

SEPTEMBER 5, 1961

Referred to the Committee on Agriculture

MARCH 29, 1962

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

HOUSE

April 2, 1962

17. APPROPRIATIONS. The Appropriations Committee reported (on Mar. 30) H. R. 11038, the second supplemental appropriation bill, 1962 (H. Rept. 1548), which includes items for ARS, AMS, and Forest Service (see table at end of this Digest for a summary of these items). The bill also includes \$25,000,000 for disaster relief assistance to States and local governments, \$17,000,000 for U. S. participation in the New York World's Fair, \$18,000 for salaries and expenses of the Delaware River Basin Commission, \$5,000,000 additional capital for the GSA general supply fund to provide for increased sales, and \$85,000,000 increased capital for the revolving fund of the Small Business Administration.
Conferees were appointed on H. R. 10526, the Treasury-Post Office Departments and Executive Office of the President appropriation bill (p. 5060). Senate conferees have already been appointed.
Received from the President an amendment to the budget for 1963 involving an increase of \$6 million for the civil functions of the Department of the Army (H. Doc. 378). p. 5160
Received from the President amendments to the budget for 1963 involving a net decrease of \$265,000 for civil functions of the Corps of Engineers, Department of the Army (H. Doc. 379). p. 5160
18. FARM PROGRAM. The "Daily Digest" states that the Subcommittee on Dairy and Poultry of the Agriculture Committee "ordered reported favorably to the full committee title III /on marketing orders/ (amended), of H. R. 10010, the general farm bill. Also ordered reported subtitle C /on dairy/ (amended), of title IV, without recommendation." p. D235
19. LIVESTOCK DISEASES. Passed under suspension of the rules S. 860, to grant the Secretary of Agriculture additional authority to provide greater protection against the introduction and dissemination of diseases of livestock and poultry. pp. 5121-4
20. PERISHABLE COMMODITIES. Passed under suspension of the rules S. 1037, to amend the provisions of the Perishable Agricultural Commodities Act regarding fees, oral hearings, and relicensing. pp. 5124-6
21. SCHOOL LUNCH PROGRAM. At the request of Rep. Ford, passed over without prejudice H. R. 8962, to revise the formula for apportioning cash assistance funds among the States under the National School Lunch Act. p. 5061
22. FORESTRY. Passed with an amendment H. R. 9822, to provide that lands within a national forest acquired under section 8 of the Act of June 28, 1934, as amended (43 U.S.C. 315g), may be added to the national forest. p. 5061
23. WILDLIFE. Passed as reported H. J. Res. 489, to provide protection for the golden eagle. pp. 5062-6
24. HONEYBEES. Passed without amendment H. R. 8050, to prohibit the importation of all honeybees of the genus *Apis* in the adult stage except for research purposes by this Department or as the Secretary shall determine. p. 5078
25. WEIGHTS AND MEASURES. At the request of Rep. Gross, passed over without prejudice H. R. 2049, to provide that the National Bureau of Standards shall conduct a program of investigation, research, and survey to determine the practicability of the adoption by the U. S. of the metric system of weights and measures. p. 5061

26. LOANS. Passed as reported H. R. 946, to extend to oyster planters the benefits of the provisions of the present law which provides for production disaster loans for farmers and stockmen. pp. 5078-9
27. FOREIGN TRADE. On objection of Rep. Curtis, Mo., passed over H. R. 10788, to amend section 204 of the Agricultural Act of 1956 to authorize the President to extend import-export controls to non-participants in multilateral cotton textile agreements, pp. 5079-80
28. RESEARCH. At the request of Rep. Ford, passed over without prejudice H. R. 6984, to provide for a method of payment of indirect costs of research and development contracted by the Federal Government at universities, colleges, and other educational institutions. pp. 5080-1
29. BUDGETING. Passed without amendment H. R. 10613, to repeal subsection (d) of section 16 of the Administrative Expenses Act of 1946 which requires detailed budget estimates for appropriations to be used for purchase or hire of passenger motor vehicles or for purchase, maintenance, or operation of aircraft. p. 5081
30. PERSONNEL; TRANSPORTATION. Passed without amendment H. R. 10652, to provide a more reasonable allowance for transportation of house trailers or mobile dwellings by certain governmental officers and employees upon their transfer from one official station to another. p. 5081
31. BANKING. By a vote of 255 to 94, passed under suspension of the rules H. R. 10162, to amend the Bretton Woods Agreements Act to authorize the U. S. to participate in loans to the International Monetary Fund to strengthen the international monetary system. pp. 5086-99
32. RECREATION. Passed under suspension of the rules H. R. 1171, to increase the public benefits from the national fish and wildlife conservation areas through their incidental or secondary use for public recreation. pp. 5099-102
33. TERRITORIES. Passed under suspension of the rules H. R. 10062, to extend the application of certain laws to American Samoa including extension of the provisions of the National School Lunch Act to Samoa, and authorizing the head of any Federal department to extend to American Samoa, without reimbursement, such scientific, technical, and other assistance under any program which it administers as, in the judgment of the Governor, will promote the welfare of American Samoa (pp. 5127-8). The committee report includes the following statement regarding costs: "The bill provides for no increase in authorized appropriations. The amount of aid which may be requested under section 1 of the bill is limited to \$150,000 a year ... Other items in the bill will be charged to regular departmental appropriations as need occurs."
34. EDUCATION. The Education and Labor Committee reported without amendment H. R. 10896, the proposed Adult Basic Education Act of 1962 (H. Rept. 1551). p. 5161

ITEMS IN APPENDIX

35. FOREIGN CURRENCIES. Extension of remarks of Rep. Findley stating that "an \$86 million assist to the U. S. gold problem is possible as the result of new Public Law 480 agreements which utilize a new feature of the law." pp. A2509-10

porting and selling livestock. The present bill takes into account those objections earlier voiced and contains safeguards against the possible abuse of these newly acquired powers, imposing certain restrictions upon the Secretary of Agriculture and his employees which were deemed to be in the interest of protecting individual rights.

If the Members of the House will bear with me briefly, I shall give a section by section analysis of the bill in order that we may understand exactly what it does and may see clearly just what new authorities it does grant to the Secretary of Agriculture and precisely what restrictions it imposes upon the discretionary exercise of his authorities.

Let us begin with the definitions contained in the very first section of the bill:

Subsection B removes an existing ambiguity by its definition of "animals." It defines the term to mean "all members of the animal kingdom including birds, whether domesticated or wild, but not including man." Thus we broaden the scope of the quarantine and inspection authorities of the Department of Agriculture so as not to restrict them artificially to specific members of the animal kingdom.

Subsection C defines the geographic scope of his power in keeping with the current concepts of the jurisdiction of the Secretary so as to include such territories as the Virgin Islands which were excepted in the old law of 1930.

Further in the bill, we seek by definition to give to the Department the same powers they have had in the past over specific and restricted animal diseases in order that these powers may apply to all dangerous communicable animal diseases that could threaten the livestock industry of the United States. We have discovered recently, for example, that certain animal parasites of an extremely dangerous nature have escaped from the former endemic areas of Africa. Under existing law the Department has no authority to quarantine for these parasitic diseases.

Section 2 conveys to the Secretary, when he deems it necessary in order to guard against the introduction or dissemination of a communicable disease of livestock or poultry, the right to seize or quarantine and dispose of diseased animals in a reasonable manner, taking into consideration the nature of the disease and the necessity of such action to protect the livestock and poultry of the United States. These powers are granted with respect to, first, any animals which he finds are moving or are being handled or have moved or have been handled in interstate or foreign commerce contrary to any law or regulation administered by him for the prevention of the introduction or dissemination of any communicable disease of livestock or poultry; second, any animals which he finds are moving into the United States, or interstate, and are affected with or have been exposed to any communicable disease dangerous to livestock or poultry; and, third, any animals which he finds have moved into

the United States, or interstate, and at the time of such movements were so affected or exposed.

Subsection (b) of section 2 gives him powers when he determines that an "extraordinary emergency" exists, because of the outbreak of such a disease anywhere in the United States, and when he finds that such an outbreak threatens the livestock or the poultry of the country, to "seize, quarantine, and dispose of, in such manner as he deems necessary or appropriate, any animals in the United States which he finds are or have been affected with or exposed to any such disease and the carcasses of any such animals and any products and articles which he finds were so related to such animals as to be likely to be a means of disseminating any such disease."

However, there is a provision at the end of subsection (b) which confers upon him the responsibility to cooperate with the States. This acts as a restriction upon his authorities in that it is "Provided, That action shall be taken under this subsection only if the Secretary finds that adequate measures are not being taken by the State or other jurisdiction." And even then the Secretary is required to notify the appropriate official of the State or other jurisdiction before any action is taken in such State or jurisdiction.

Now subsection (c) provides that "the Secretary in writing may order the owner of any animal, carcass, product, or article referred to in subsection (a) or (b) of this section, or the agent of such owner, to maintain in quarantine and to dispose of such animal, carcass, product or article in such manner as the Secretary may direct pursuant to authority vested in him by such subsections."

Subsection (d) requires the Department of Agriculture to compensate, "the owner of any animal, carcass, product or article destroyed pursuant to the provisions of this section," with one exception only, wherein it states, "such compensation shall be based upon the fair market value as determined by the Secretary of any such animal, carcass, product or article at the time of the destruction thereof."

Subsection (e) describes the only exception to that requirement that the owner be compensated, and that exception applies only as described in this subsection wherein it is provided that no such payment shall be made by the Secretary to anyone who has knowingly moved or handled any such diseased animals or animal product in violation of a law or regulation administered by the Secretary for the prevention of the interstate dissemination of the communicable disease involved.

Section 3 permits the Secretary to promulgate regulations of a sanitary character for means of conveyance and facilities handling these animals, railway cars, airplanes, trucks, and other means of conveyance, stockyards, feed, water and rest stations and other facilities.

Section 4 is a regulation which prohibits importing. It permits the Secre-

tary to promulgate regulations prohibiting or regulating the importing into the United States of animals which are found to have been affected with or exposed to these dangerous communicable diseases.

Section 5 presented a point of controversy which has been equitably resolved, I believe, in the committee. It allows the Department to stop and inspect animals moving into the United States and into interstate commerce.

Subsection (1) allows the Department of Agriculture "to stop and inspect, without a warrant, any person or means of conveyance, moving into the United States from a foreign country, to determine whether such persons or means of conveyance are carrying any animal, carcass, product or article regulated or subject to disposal under any law or regulation administered by the Secretary for prevention of the introduction or dissemination of any communicable animal disease."

And subsection (2) of section 5 allows him, "to stop and inspect, without a warrant, any means of conveyance moving interstate upon probable cause to believe that such means of conveyance is carrying any animal, carcass, product, or article regulated or subject to disposal under any law or regulation administered by the Secretary for the prevention of the introduction or dissemination of any communicable animal disease."

And then subsection (3) of section 5 allows him, "to enter upon, with a warrant, any premises for the purpose of making inspections and seizures necessary under such laws and regulations."

And section 6 provides penalties for knowing violations with a fine not exceeding \$1,000 or imprisonment not exceeding 1 year.

Section 6(b) grants the Secretary some injunctive powers that the Department has not heretofore had. He can bring an action to enjoin the violation of any regulations entered into pursuant to this act or can enjoin any interference by any person with an employee of the Department of Agriculture in carrying out the duties conferred upon him by this act.

Section 7 simply broadens the prohibited diseases under the law, as I mentioned a moment ago, by amending the old act so as to insert the words, "any communicable disease of livestock or poultry, including, but not limited to," after the word "eradicate."

Section 8 similarly broadens the scope of the law as to animals affected. Heretofore, there has been some question as to just which animals were involved in the quarantine laws. Poultry, for instance, have been in a field of question, but in this case it makes clear that it is to apply to livestock or poultry, or that the contagion of any disease exists, or vectors which may disseminate any such disease exists in such State or territory or the District of Columbia. And we would hark back to the very first page, where the definition, under subsection (b) defines, "the term 'animals' to mean all members of the animal kingdom including birds, whether domesticated or wild, but not including man."

The rest of the act is primarily technical. Section 9 similarly broadens the language of the old act so as to refer to quarantined animals.

Section 10 makes it clear that it does apply in the territories of the United States, in some of which the old act did not apply.

Section 11 allows the Secretary to issue regulations for carrying out the provisions of the act. And sections 12 and 13 are the usual savings clauses contained in all such legislation.

Mr. Speaker, I believe this bill needs to be passed in this session of the Congress. The domestic livestock and poultry business of our Nation is an industry producing a gross annual income of more than \$15 billion. In my own State of Texas alone, it provides an income in excess of \$900 million annually. The health and welfare of this great American industry is presently threatened by the somewhat sporadic nature of our existing laws and the unintended restrictions imposed by those laws upon the powers of the Department of Agriculture to move swiftly and effectively to stamp out and eradicate potentially dangerous diseases. This bill removes those unfortunate restrictions and enables the Department to perform its work while protecting the legal rights and privileges of all people legitimately engaged in that industry. I urgently recommend its adoption and request the support of the Members of the House.

The SPEAKER. The question is on suspending the rules and passing the bill S. 860, as amended.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

AMENDMENTS TO PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

Mr. POAGE. Mr. Speaker, I move to suspend the rules and pass the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraphs (6) and (7) of the first section of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), are amended to read as follows:

"(6) The term 'dealer' means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a 'dealer' in respect to sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a 'dealer' until the invoice cost of his purchases of such commodity in any calendar year are in excess of \$100,000; and (C) no person buying any such commodity for canning and/or processing within the State where grown shall be considered a 'dealer'

whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph 4 of this section. Any person not considered as a 'dealer' under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a 'dealer';

"(7) The term 'broker' means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a 'broker' if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables;"

Sec. 2. The first section of such Act (7 U.S.C. 499a) is further amended by adding at the end thereof the following new paragraphs:

"(9) The term 'responsibly connected' means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

"(10) The terms 'employ' and 'employment' mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment."

Sec. 3. The third sentence of section 3(b) of such Act (7 U.S.C. 499c(b)) is amended to read as follows: "Upon the filing of the application, and annually thereafter, the applicant shall pay such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), but in no event shall such fee exceed \$50. Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the 'Perishable Agricultural Commodities Act Fund', which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above: *Provided*, That financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as submitted to the Congress annually. The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase."

Sec. 4. Section 3 of such Act (7 U.S.C. 499c) is further amended by adding at the end thereof the following new subsection:

"(c) A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name, if in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or con-

fusing to the trade if used by such applicant."

Sec. 5. Section 4(a) of such Act (7 U.S.C. 499d(a)) is amended by inserting before the period at the end thereof "And provided further, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt".

Sec. 6. Section 4(b) of such Act (7 U.S.C. 499d(b)) is amended to read as follows:

"(b) The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is a person who, or is or was responsibly connected with a person who—

"(A) has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;

"(B) within two years prior to the date of application has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;

"(C) within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491-497), relating to the prevention of destruction and dumping of farm produce; or

"(D) has failed, except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application."

Sec. 7. Section 4(c) of such Act (7 U.S.C. 499d(c)) is amended to read as follows:

"(c) Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided."

Sec. 8. Subsections (c) and (d) of section 6 of such Act (7 U.S.C. 499f) are amended by striking out "\$500" each place it appears and inserting in lieu thereof "\$1,500".

Sec. 9. Section 7(c) of such Act (7 U.S.C. 499g(c)) is amended by striking the second sentence thereof and substituting therefor the following: "Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition

in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States."

SEC. 10. Section 7(d) of such Act (7 U.S.C. 499g(d)) is amended by striking the proviso at the end of the section and substituting therefor the following: "Provided, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied."

SEC. 11. Section 8(b) of such Act (7 U.S.C. 499h(b)) is amended to read as follows:

"(b) Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

"(1) whose license has been revoked or is currently suspended by order of the Secretary;

"(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

"(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section."

SEC. 12. The Act of June 10, 1933 (48 Stat. 123; 7 U.S.C. 581-589), popularly known as the Export Apple and Pear Act, is amended by adding at the end thereof a new section as follows:

"SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act."

The SPEAKER. Is a second demanded?

Mr. HOEVEN. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. HOEVEN. Mr. Speaker, when this bill was originally reported from the committee there was some objection on the part of the National Association of Retail Grocers. It is my understanding that that objection has now been alleviated.

Mr. POAGE. That is my understanding. We adopted an amendment which was alleged to be satisfactory to the association. Since that time their attorney has expressed their approval of what has been done. Since that time we have not received any communication or letter of protest about it. He tells me they are very happy about what we did do.

Mr. HOEVEN. Mr. Speaker, during our consideration of this bill there were only two areas of basic disagreement. The first involved the status of frozen food brokers under the act and the second involved the licensing requirements of small retail grocers. The Committee on Agriculture and the Domestic Marketing Subcommittee have considered this bill and a similar bill by the gentleman from Maine [Mr. McINTIRE] very thoroughly. The committee amendment to the bill, as has been pointed out, removed the objections of the frozen food brokers and the National Association of Retail Grocers—Nargus.

The committee amendment exempts frozen food brokers from the licensing provisions of the act. This was done on the theory that these brokers are merely acting for their licensed principals.

The committee amendment also exempts retail grocers who purchase in interstate commerce less than \$100,000 worth, at net invoice cost, of the fresh fruits and vegetables covered by the act in any 1 calendar year. This was a compromise between the Department of Agriculture's recommendation for a \$50,000 exemption and the Nargus proposal for exempting those retail grocers doing at least 90 percent of their business with a licensed wholesaler.

All parties, the Department, the committee, and the retail grocers agree that this new criteria is far superior to the present law which requires a burdensome and unwieldy check of grocers' records to determine whether more than 1 ton for more than 20 days per year was purchased by a retail grocer.

In addition to the two changes I have already discussed, the bill makes these further changes in the law:

First. Improves and clarifies provisions dealing with the eligibility for license, or for employment by licensees, of persons guilty of specified acts and persons affiliated with them;

Second. Authorizes increase of license fees from \$25 per year to such higher rate not above \$50 as may prove necessary;

Third. Eliminates the Export Apple and Pear Act from the acts administered with license fees received under the Perishable Agricultural Commodities Act; and authorizes appropriations to carry out the Export Apple and Pear Act;

Fourth. Regulates the use of trade names by licensees to prevent deception;

Fifth. Provides that opportunity for an oral hearing need not be provided in reparation cases unless the amount in dispute exceeds \$1,500 (instead of \$500);

Sixth. Makes it clear that in an appeal from a reparation order, bond must be filed within 30 days after entry of the order and provides that the bond shall be in cash, negotiable securities, or the undertaking of a recognized surety company; and

Seventh. Defers license suspension in case of appeal until all judicial appeals have ended.

S. 1037, as amended, was reported to the House unanimously.

(Mr. McINTIRE (at the request of Mr. HOEVEN) was given permission to extend his remarks at this point in the Record.)

Mr. McINTIRE. Mr. Speaker, I support and urge passage of S. 1037, a bill providing for adjustment in the license fees pertinent to the Perishable Agricultural Commodities Act.

I have introduced to the Congress a bill which, in effect, is companion to this legislation that is before the House today, legislation that is designed to clarify and strengthen the provisions of the Perishable Agricultural Commodities Act.

Mr. Speaker, this act has been in effect since 1930, functioning to effectuate and maintain high standards in the commerce of fruit and vegetables and to suppress unfair and fraudulent trade practices. It is under this authority that the Secretary of Agriculture issues licenses for a fee to brokers, commission merchants, and dealers engaged in the trade of perishable agricultural commodities, and licensees maintain a "good business" rating so long as they comply with the provisions of the act. Violation of the act's provisions can result either in suspension or revocation of license by the Secretary.

The legislation before this House effects certain technical adjustments in the Agricultural Commodities Act, and principally accomplishes three things: First, improves and clarifies provisions dealing with eligibility for license under the act; second, authorizes an increase of license fee from the now \$25 per year to a level not in excess of \$50; and third, establishes new criteria for exemption for the provisions of the act.

This legislation, Mr. Speaker, is the outgrowth of much study on the part of a multitude of individuals prominent in the fruit and vegetable industry and many conferences between these individuals and USDA officials of the Fruit and Vegetable Branch.

I would like to remind the Members of the House that the Federal Government is not confronted with any great measure of expense in administering this act,

for fees and penalties collected under this authority make the act essentially self-sustaining. Such funds are held in the Treasury of the United States to help defray costs implicit to the act's administration.

However, ours is an economy of rising costs, and the costs associated with the administration of the Perishable Agricultural Commodities Act are no exception. It is for this reason that the instant legislation calls for a new ceiling on license fees, a new maximum that will permit this authority to operate along what would approximate self-sustained lines.

I firmly believe that this legislation is in the best interests of the fruit and vegetable industry, and its approval by the House of Representatives today will, I believe, go a long way in the direction of preserving the high standards that have been the hallmark of the fruit and vegetable trade.

Mr. HEMPHILL. Mr. Speaker, at the insistence of some of my very warm friends and valued constituents who are in the retail business in Rock Hill, S.C., I came here today prepared to oppose this legislation. These fine friends had written to me that this legislation was devastating to their business and would have an undesirable effect on small independent merchants and their operations.

Upon call of the bill under suspension, I was happy to hear the vice chairman of the Committee on Agriculture, the Honorable W. R. POAGE of Texas, whom I greatly admire, state that the bill had been amended and this amendment had been declared acceptable by those in the mercantile business, especially the small merchants, including the Retail Merchants Association. This was also referred to by the Honorable CHARLES HOEVEN, minority ranking member of the House Committee on Agriculture.

I am most happy that, again, the Congress of the United States, as representatives of the people, have the will, and the determination, to think of the smaller merchant. I am happy that the amendment has so provided that the small merchant is not hurt, and I congratulate the committee on accepting the amendment.

I hope in all other matters in which this Congress acts we will see fit to take care of the smaller businessman as he is vital to the present and future economy and strength of this Nation.

EXTENSION OF REMARKS

Mr. POAGE. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to extend their remarks on this bill and on S. 860.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER. The question is on suspending the rules and passing the bill (S. 1037) as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TRIAL BOARDS FOR U.S. PARK POLICE

Mr. RUTHERFORD. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8567) to authorize the Secretary of the Interior to create trial boards for the U.S. Park Police, and for other purposes, with amendments as printed in the bill.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in the making and enforcement of rules and regulations for the government, conduct, and discipline of the United States Park Police, the Secretary of the Interior may provide, in addition to any other penalties authorized by law, for fines of not to exceed \$100 and for suspensions without pay for not more than seven days for any violation of such rules and regulations or for misconduct in office.

(b) Disciplinary action involving a suspension without pay for three days or less may be taken pursuant to a summary proceeding by the Chief of the United States Park Police. Any person subject to such a proceeding shall be entitled to a trial board proceeding upon his request made at any time prior to the imposition of summary penalties but not thereafter.

(c) Disciplinary action against any member of the United States Park Police involving a fine or a suspension without pay for more than three days shall be taken only after a proceeding before a trial board and on the basis of written charges referred to the trial board by the Chief of the United States Park Police. Any such charges referred to a trial board may be altered or amended in the discretion of the trial board under such regulations as the Secretary may adopt. The accused shall be entitled to an opportunity to be heard before the trial board on any charge referred to it and on any altered or amended charge.

(d) Any member of the United States Park Police accused of violating the rules and regulations for the proper government, conduct, and discipline of the United States Park Police, or for misconduct in office, shall be entitled to representation by counsel of his choice.

SEC. 2. (a) The Secretary of the Interior is authorized to create one or more trial boards for the trial of members of the United States Park Police who are charged with any violation of the rules and regulations for the proper government, conduct, and discipline of the United States Park Police or for misconduct in office; to prescribe the rules of procedure before such trial boards; and to change or abolish any trial board. Each trial board shall consist of three persons designated by the Secretary. One and only one member of each such board shall be a member of the United States Park Police; he shall, except in the case of a trial of an officer with the rank of inspector, have a rank no lower than that of the accused. The Secretary shall designate the chairman of each trial board.

(b) The findings and sentence of a trial board with respect to fines and suspensions within the limits authorized by this Act shall be final and conclusive unless notice of an appeal therefrom in writing is given within ten days to the Secretary of the Interior. The Secretary is authorized, but is not required, in his review of the evidence and findings of a trial board to receive new evidence, either oral, written, or documentary, and he is authorized to confirm or modify the findings and sentence of a trial board or to remand the case to the trial board for such further proceedings as he may deem necessary, but no such modification shall increase the severity of the sen-

tence of the trial board. Notwithstanding the provisions of this or any other law, the decision of the Secretary on appeal with respect to fines and suspensions within the limits authorized by this Act shall be final and conclusive. Any other decision of the Secretary shall be subject to such appeal, if any, as may otherwise be authorized by law.

(c) The findings of a trial board which indicate the possibility of disciplinary action greater than the fines or suspensions authorized by this Act shall be referred with appropriate recommendations to the official of the Department who has been designated by the Secretary of the Interior to act in such cases. The decision of this official may be appealed to the Secretary of the Interior as in section 2(b) above.

SEC. 3. (a) The chairman of any trial board appointed pursuant to this Act is authorized to administer oaths and to take affirmations of witnesses before such board.

(b) Any trial board appointed pursuant to this Act shall, in any proceeding before it, have the power to issue subpoenas in the name of the chief judge of the United States District Court for the District of Columbia to compel witnesses to appear and testify and to produce all relevant books, records, papers, or documents. Witnesses other than those employed by the United States Department of the Interior who are subpoenaed to appear before a trial board shall be entitled to the same fees that are paid to witnesses for attendance before the United States District Court for the District of Columbia, but such fees need not be tendered to the witnesses in advance of their appearing and testifying or producing books, records, papers, or documents.

(c) Any willful false swearing on the part of any witness before a trial board provided for herein as to any material fact shall be deemed to be perjury and shall be punished in the manner prescribed by law for such offense.

(d) If any witness who has been personally summoned shall neglect or refuse to obey a subpoena issued pursuant to this Act, the chairman of the trial board may report that fact to the United States District Court for the District of Columbia or to one of the judges thereof and said court, or any judge thereof, is authorized to compel obedience to the subpoena to the same extent that witness may be compelled to obey the subpoenas of that court.

SEC. 4. Each member of a trial board appointed pursuant to this Act shall take an oath for the faithful and impartial performance of the duties of the office.

SEC. 5. The rules and regulations of the United States Park Police which are in effect as of the date of the approval of this Act are hereby ratified and shall remain in force until changed, altered, amended, or abolished by the Secretary of the Interior.

The SPEAKER. Is a second demanded?

Mr. SAYLOR. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. RUTHERFORD. Mr. Speaker, the purpose of this bill is to furnish the Secretary of the Interior with a means for handling minor disciplinary problems in the U.S. Park Police comparable to that which exists for other police forces.

All of us realize, I think, that a police chief who does not have the means with which to enforce, quickly and fairly, the rules and regulations applicable to his force is in a pretty helpless condition. That is the situation today with the U.S. Park Police—a 225-man body which is in charge of the 783 units which make

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Sept. 11, 1962
For actions of Sept. 10, 1962
87th-2d, No. 162

CONTENTS

Appropriations.....13	Foreign agriculture.....9	Public Law 480.....21
Area redevelopment.....1	Foreign currencies.....21	Public works.....1
Assaults.....16	Foreign trade.....6,18	Recreation.....4
Bread imports.....18	Housing.....8	Safety.....15
Cuba.....9	Information.....10	Soil conservation.....19
Economics.....7,20	Lands.....2	Surplus commodities.....21
Employment.....7	Legislative program.....18	Tariff.....18
Farm labor.....12	Perishable commodities...3	Taxation.....25,14
Farm program.....11	Personnel.....15,16	Transportation.....17
Flood control.....22	Prices.....20	Wildlife.....4

HIGHLIGHTS: Senate agreed to House amendments to public works acceleration bill.
Sen. Humphrey inserted article supporting proposed foreign trade bill.

SENATE

1. PUBLIC WORKS. By a vote of 45 to 22, agreed to the House amendments to S. 2965, the public works acceleration bill (pp. 17842, 17847-61). This bill will now be sent to the President. As agreed to the bill authorizes an immediate \$900 million public works program in those areas which are designated by the Secretary of Commerce under the Area Redevelopment Act as "redevelopment areas" and those areas which the Secretary of Labor designates each month as having been areas of substantial unemployment for at least 9 of the preceding 12 months. Of the \$900 million authorized to be appropriated, \$300 million is to be reserved for allocation in areas designated under Sec. 5 (b) of the Area Redevelopment Act relating to unemployment in rural areas.

By a vote of 30 to 38, rejected an amendment by Sen. Cooper to correct a technical error in the bill which erroneously refers to a section not in the bill. pp. 17842, 17847-52

Rejected an amendment by Sen. Lausche to strike out a House amendment which alters the amount of money that local and State governments may post to qualify themselves for participation in the grants that are to be made. pp. 17856-7

2. PUBLIC LANDS. The Interior and Insular Affairs Committee reported with amendments S. 3160, to amend the act of March 8, 1922 (permitting entry on and patent for land containing minerals) so as to extend its provisions to the townsite laws applicable in Alaska (S. Rept. 2022). p. 17836
3. PERISHABLE COMMODITIES. Conferees were appointed on S. 1037, to amend the Perishable Agricultural Commodities Act regarding fees, oral hearings, and re-licensing. House conferees have not yet been appointed. p. 17862
4. WILDLIFE; RECREATION. SenS Williams, N. J., and Keating submitted amendments intended to be proposed to H. R. 1171, to increase the public benefits from the national fish and wildlife conservation areas through their incidental or secondary use for public recreation. pp. 17862-3
5. TAXATION. Passed with amendments H. R. 6413, to extend to fishermen the same treatment accorded farmers in relation to estimated income tax. p. 17864
6. FOREIGN TRADE. Sen. Humphrey inserted an article, "Challenge for America: Trade or Fade," supporting enactment of the proposed Trade Expansion Act of 1962. pp. 17837-40
7. EMPLOYMENT; ECONOMICS. Sen. Douglas submitted a resolution to authorize the printing of additional copies of hearings of the Jt. Economic Committee, "State of the Economy and Policies for Full Employment." pp. 17836, 17837
Sen. Humphrey inserted an article by Leon Keyserling, "One Prescription for Unemployment." pp. 17840-1
8. HOUSING. Sen. McNamara submitted a resolution to authorize the printing of additional copies of a committee print of the Special Committee on Aging, "Housing for the Elderly." p. 17837
9. CUBA; FOREIGN AGRICULTURE. Sen. Dodd inserted several articles discussing the situation in Cuba, including the shortage of food supplies. pp. 17874-7
10. INFORMATION. Sen. Thurmond inserted several articles on a new book, "Washington Cover-Up," regarding the use of executive privilege in withholding information from Congress. pp. 17865-6

HOUSE

11. FARM PROGRAM. The "Daily Digest" states, "Conferees continued, in executive session, to resolve the differences between the Senate- and House-passed versions of H. R. 12391, proposed Food and Agriculture Act of 1962, but did not reach final agreement, and will meet again tomorrow." p. D821
12. MIGRANT LABOR. Passed with amendment S. 1130, to amend title III of the Public Health Service Act to authorize grants for improving domestic agricultural migratory workers' health services and conditions. A similar bill, H. R. 12365, was laid on the table. pp. 17804, 17808-14
13. MILITARY CONSTRUCTION APPROPRIATIONS. Conferees were appointed on H. R. 12870, the military construction appropriation bill. Senate conferees have already been appointed. p. 17802
14. TAXATION. Conferees were appointed on H. R. 10650, the proposed Revenue Act of 1962. Senate conferees have already been appointed. p. 17802

acceleration period, cause the unobligated balances of appropriations, contract authorizations, revolving funds, and other authorizations to expend from public or corporate debt receipts available to departments and agencies such as the Federal Deposit Insurance Corporation, the Federal Home Loan Bank, and even the World Bank, to be transferred to accounts of other departments and agencies or to some new agency to be used to carry out the purposes of the standby act. Agencies would have been required to turn over to whatever agency was established to administer the expenditure of the \$2 billion, funds that Congress had provided for their uses, whether or not they desired to do so. In the Senate Committee on Public Works I moved, supported by Republican members, to strike this irresponsible method of financing, proposed by the administration—but our motion was defeated by the Democratic majority on the committee. Once the proposal was understood, the Senate agreed that this unique method of financing could be detrimental to the security of many agencies. On the Senate floor, this financing proposal was abandoned quickly by the majority, and the bill was amended to authorize appropriations for the standby program in the regular manner, largely as a result of united Republican opposition to the bizarre scheme.

The bill which was passed by the Senate today is a much better bill than that originally presented to the Senate by the administration, and was improved at every stage by responsible Republican action.

I am for a public works program, and I am concerned about unemployment in areas which have been left behind. I know that in the long run, the ability to provide jobs for our people depends on a strong economy. Basic measures are needed such as tax reform, tax reduction and the elimination of unnecessary expenditures to give the people confidence in our economy. But the proposed bill represents a new attempt to relieve unemployment, and I think it can be useful as an auxiliary measure in areas where people are unemployed. We must not forget these people, who through no fault of their own, cannot find work. We must help them.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oklahoma [Mr. KERR] that the Senate agree to the House amendments. The yeas and nays have been ordered, and the Clerk will call the roll.

The legislative clerk called the roll.

Mr. HUMPHREY. I announce that the Senator from Alaska [Mr. BARTLETT], the Senator from North Dakota [Mr. BURDICK], the Senator from Nevada [Mr. CANNON], the Senator from Louisiana [Mr. ELLENDER], the Senator from California [Mr. ENGLE], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Tennessee [Mr. GORE], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Alabama [Mr. HILL], the Senator from Montana [Mr. METCALF], the Senator from Oklahoma [Mr. MONRONEY], the Senator from Oregon [Mrs. NEUBERGER], the Senator from Florida [Mr. SMATHERS], and the Senator from Massachusetts [Mr. SMITH] are absent on official business.

I further announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Colorado [Mr. CARROLL], the Senator from Idaho [Mr. CHURCH], the Senator from Alaska [Mr. GRUENING], the Senator from Wyoming [Mr.

HICKEY], the Senator from Missouri [Mr. LONG], and the Senator from Missouri [Mr. SYMINGTON] are necessarily absent.

I further announce that, if present and voting the Senator from New Mexico [Mr. ANDERSON], the Senator from Alaska [Mr. BARTLETT], the Senator from North Dakota [Mr. BURDICK], the Senator from Nevada [Mr. CANNON], the Senator from Colorado [Mr. CARROLL], the Senator from Idaho [Mr. CHURCH], the Senator from California [Mr. ENGLE], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Texas [Mr. GORE], the Senator from Alaska [Mr. GRUENING], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Wyoming [Mr. HICKEY], the Senator from Alabama [Mr. HILL], the Senator from Missouri [Mr. LONG], the Senator from Oregon [Mrs. NEUBERGER], the Senator from Florida [Mr. SMATHERS], the Senator from Massachusetts [Mr. SMITH], and the Senator from Missouri [Mr. SYMINGTON] would each vote "yea."

On this vote, the Senator from Montana [Mr. METCALF] is paired with the Senator from New Hampshire [Mr. MURPHY]. If present and voting, the Senator from Montana would vote "yea," and the Senator from New Hampshire would vote "nay."

On this vote, the Senator from Oklahoma [Mr. MONRONEY] is paired with the Senator from Kansas [Mr. PEARSON]. If present and voting, the Senator from Oklahoma would vote "yea," and the Senator from Kansas would vote "nay."

On this vote, the Senator from Louisiana [Mr. ELLENDER] is paired with the Senator from South Dakota [Mr. BORTUM]. If present and voting, the Senator from Louisiana would vote "yea," and the Senator from South Dakota would vote "nay."

Mr. KUCHEL. I announce that the Senator from Vermont [Mr. AIKEN] is absent on official business.

The Senator from Utah [Mr. BENNETT], the Senator from South Dakota [Mr. BORTUM], the Senator from Indiana [Mr. CAPEHART], the Senators from New Hampshire [Mr. COTTON] and Mr. MURPHY], the Senator from Illinois [Mr. DIRKSEN], the Senator from Hawaii [Mr. FONG], the Senator from New York [Mr. JAVITS], the Senator from Kentucky [Mr. MORTON] and the Senator from Kansas [Mr. PEARSON] are necessarily absent.

If present and voting, the Senator from Vermont [Mr. AIKEN], and the Senator from New York [Mr. JAVITS] would each vote "yea."

On this vote, the Senator from South Dakota [Mr. BORTUM] is paired with the Senator from Louisiana [Mr. ELLENDER]. If present and voting, the Senator from South Dakota would vote "nay" and the Senator from Louisiana would vote "yea."

On this vote, the Senator from Hawaii [Mr. FONG] is paired with the Senator from Utah [Mr. BENNETT]. If present and voting, the Senator from Hawaii would vote "yea," and the Senator from Utah would vote "nay."

On this vote, the Senator from Kentucky [Mr. MORTON] is paired with the Senator from New Hampshire [Mr. Cot-

ton]. If present and voting, the Senator from Kentucky would vote "yea," and the Senator from New Hampshire would vote "nay."

On this vote, the Senator from New Hampshire [Mr. MURPHY] is paired with the Senator from Montana [Mr. METCALF]. If present and voting, the Senator from New Hampshire would vote "nay," and the Senator from Montana would vote "yea."

On this vote, the Senator from Kansas [Mr. PEARSON] is paired with the Senator from Oklahoma [Mr. MONRONEY]. If present and voting, the Senator from Kansas would vote "nay," and the Senator from Oklahoma would vote "yea."

The result was announced—yeas 45, nays 22, as follows:

[No. 250 Leg.]

YEAS—45

Beall	Jackson	Moss
Bible	Johnston	Muskie
Boggs	Jordan, N.C.	Pastore
Byrd, W. Va.	Keating	Pell
Case	Kefauver	Prouty
Chavez	Kerr	Proxmire
Clark	Kuchel	Randolph
Cooper	Long, Hawaii	Russell
Dodd	Long, La.	Scott
Douglas	Magnuson	Sparkman
Eastland	Mansfield	Talmadge
Ervin	McCarthy	Wiley
Hart	McGee	Williams, N.J.
Holland	McNamara	Yarborough
Humphrey	Morse	Young, Ohio

NAYS—22

Allott	Hruska	Smith, Maine
Bush	Jordan, Idaho	Stennis
Butler	Lausche	Thurmond
Byrd, Va.	McClellan	Tower
Carlson	Miller	Williams, Del.
Curtis	Mundt	Young, N. Dak.
Goldwater	Robertson	
Hickenlooper	Saltonstall	

NOT VOTING—33

Aiken	Dirksen	Javits
Anderson	Ellender	Long, Mo.
Bartlett	Engle	Metcalf
Bennett	Fong	Monroney
Bortum	Fulbright	Morton
Burdick	Gore	Murphy
Cannon	Gruening	Neuberger
Capehart	Hartke	Pearson
Carroll	Hayden	Smathers
Church	Hickey	Smith, Mass.
Cotton	Hill	Symington

So Mr. KERR's motion was agreed to.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. RANDOLPH. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion by the Senator from West Virginia to lay on the table the motion by the Senator from Montana to reconsider the vote, by which the Senate concurred in the amendments of the House.

The motion to lay on the table was agreed to.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, earlier today the Senate granted a unanimous-consent request that, when it concludes its deliberations today, it adjourn to meet at 10 o'clock tomorrow morning. At this time I ask unanimous consent that the time for meeting be changed to 11 o'clock tomorrow morning, instead of 10 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1776, and that the Senate disagree to—

Mr. President, I withdraw that motion, because the Senator who offered the particular amendment with which I wanted to move to disagree is not in the Chamber, and I notice "amendments" are to be considered. We will wait, and consider that bill later.

AMENDMENT OF PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930, RELATING TO PRACTICES IN MARKETING PERISHABLE AGRICULTURAL COMMODITIES

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930 relating to practices in the marketing of perishable agricultural commodities, which were, on page 1, strike out all after line 2, over through and including line 4, on page 2, and insert:

That paragraphs (6) and (7) of the first section of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), are amended to read as follows:

"(6) The term 'dealer' means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a 'dealer' in respect to sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as 'dealer' until the invoice cost of his purchases of such commodity in any calendar year are in excess of \$100,000; and (C) no person buying any such commodity for canning and/or processing within the State where grown shall be considered a 'dealer' whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph 4 of this section. Any person not considered as a 'dealer' under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a 'dealer';

"(7) The term 'broker' means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a 'broker' if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables;"

Sec. 2. The first section of such Act (7 U.S.C. 499a) is further amended by adding at the end thereof the following new paragraphs:

"(9) The term 'responsibly connected' means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

"(10) The terms 'employ' and 'employment' mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment."

On page 2, line 5, strike out "Sec. 2." and insert "Sec. 3."; on page 2, line 13, strike out all after "\$50" down through and including "\$25" in line 17; on page 3, line 7, strike out "Sec. 3." and insert "Sec. 4."; on page 3, line 24, strike out "Sec. 4." and insert "Sec. 5."; on page 4, line 1, strike out "Sec. 5." and insert "Sec. 6."; on page 5, line 5, strike out "Sec. 6." and insert "Sec. 7."; on page 6, line 11, strike out "Sec. 7." and insert "Sec. 8."; on page 6, line 14, strike out "Sec. 8." and insert "Sec. 9."; on page 7, line 10, strike out "Sec. 9." and insert "Sec. 10."; on page 7, line 20, strike out "Sec. 10." and insert "Sec. 11."; and on page 9, line 13, strike out "Sec. 11." and insert "Sec. 12."

Mr. HOLLAND. Mr. President, I move that the Senate disagree to the amendments of the House, request a conference with the House of Representatives thereon, and that the Chair appoint conferees on the part of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Florida.

The motion was agreed to; and the Presiding Officer appointed Mr. JOHNSTON, Mr. ELLENDER, Mr. HOLLAND, Mr. AIKEN, and Mr. YOUNG of North Dakota conferees on the part of the Senate.

FISH AND WILDLIFE BENEFITS

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1815, H.R. 1171.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H.R. 1171) to assure continued fish and wildlife benefits from the national fish and wildlife conservation areas by authorizing their appropriate incidental or secondary use for public recreation to the extent that such use is compatible with the primary purposes of such areas, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to; and the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, with amendments, on page 2, line 23, after the word "hatcheries", to strike out "and" and insert "game ranges, and other"; on page 3, line 12, after the word "upon", to strike out "the wildlife populations" and insert "fish and wildlife populations and management operations"; at the beginning of line 13, to insert "in existence or approved by the Migratory Bird Conservation Commission as of the date of enactment of this Act"; on page 4, line 1, after the word "stamps", to insert "Lands acquired pursuant to this section shall become a part of the particular conservation area to which they are adjacent."; in line 14, after the word "reasonable", to strike out

"charges, fees, and" and insert "charges and fees and issue"; in line 18, after the word "purposes", to strike out "of this Act"; and in line 19, after the amendment just stated, to insert "The Secretary may issue regulations to carry out the purposes of this Act."

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the amendments be agreed to en bloc, and that the bill as thus amended be treated as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, there will be no further action taken on the bill today.

Mr. KUCHEL. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. KUCHEL. Under the unanimous-consent agreement entered into, by which the committee amendments were agreed to, I assume there would be no parliamentary difficulty in one of my colleagues offering an amendment subsequently.

Mr. MANSFIELD. Oh, no.

Mr. WILLIAMS of New Jersey subsequently said: Mr. President, I submit an amendment to H.R. 1171 to assure continued fish and wildlife benefits from the national fish and wildlife conservation areas by authorizing their appropriate incidental or secondary use for public recreation to the extent that such use is compatible with the primary purposes of such areas, and for other purposes. I ask that the amendment may be printed and not read and that the text of the amendment be printed in the Record at this point.

The PRESIDING OFFICER. Without objection, the amendment will be printed without reading.

The amendment is as follows:

At the end of the bill, insert the following:

"Sec. 6. Section 9(a) of the Trading With the Enemy Act, as amended, is amended by striking out the period at the end thereof and inserting in lieu thereof a colon and the following: 'Provided further, That upon a determination made by the President, in time of war or during any national emergency declared by the President, that the interest and welfare of the United States require the sale of any property, or interest or any part thereof claimed in any suit filed under this subsection and pending on or after the date of enactment of this proviso the Alien Property Custodian or any successor officer, or agency may sell such property or interest or part thereof, in conformity with law applicable to sales of property by him, at any time prior to the entry of final judgment in such suit. No such sale shall be made until thirty days have passed after the publication of notice in the Federal Register of the intention to sell. The net proceeds of any such sale shall be deposited in a special account established in the Treasury, and shall be held in trust by the Secretary of the Treasury pending the entry of final judgment in such suit. Any recovery of any claimant in any such suit in respect of the property or interest or part thereof so sold shall be satisfied from the net proceeds of such sale unless such claimant, within sixty days after receipt of notice of the amount of net proceeds

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Sept. 12, 1962
For actions of Sept. 11, 1962
87th-2d, No. 163

CONTENTS

Alaska roads.....7	Foreign aid.....17	Public works.....13
ARS.....27	Foreign currency.....31	Quality stabilization....26
Assistant Secretary.....28	Foreign trade.....8,20,30	Radiation.....16
Atomic energy.....3	Forestry.....12,28	Research.....27
Cotton.....8,20,30	Information.....10	Roads.....7
Estes.....10,29	Land-grant colleges....21	School lunch.....11
Family planning.....23	Lands.....18	Seashore.....6
Farm labor.....9	Monopolies.....14	Tariff.....4
Farm program.....1	Pay.....25	Textile imports.....8,20,30
Food.....17,22	Perishable commodities...2	Transportation.....24
Foreign affairs.....15	Prices.....22	Wheat.....19

HIGHLIGHTS: Sen. Thurmond criticized Tariff Commission decision on cotton textile import fee. Sen. Holland inserted Governor's conference report on protection against atomic fallout. Sen. Humphrey inserted Herbert Waters speech on importance of food in foreign aid program. Sen. Magnuson and several Representatives introduced bill to establish Assistant Secretary for Forestry Resources. Rep. Alexander introduced and discussed bills to restrict imports of cotton products.

HOUSE

1. **FARM PROGRAM.** The "daily Digest" states that "Conferees continue, in executive session, to resolve the differences between the Senate- and House-passed versions of H. R. 12391, proposed Food and Agriculture Act of 1962, but did not reach final agreement, and will meet again tomorrow." p. D826
2. **PERISHABLE COMMODITIES.** Conferees were appointed on S. 1037, to amend the Perishable Agricultural Commodities Act regarding fees, oral hearings, and re-licensing. Senate conferees have already been appointed. p. 18005

3. ATOMIC ENERGY. Received the conference report on H. R. 11974, to authorize appropriations for the Atomic Energy Commission (H. Rept. 2342). pp. 17990-3 18047
4. TARIFFS. Passed as reported H. R. 12242, to provide for the tariff classification of certain particleboard. pp. 18003-4
5. TAXATION. Concurred in the Senate amendment to H. R. 6413, to extend to fishermen the same treatment accorded farmers in relation to estimated income tax. This bill will now be sent to the President. p. 18005
6. SEASHORE. Began debate on S. 4, to provide for the establishment of the Padre Island National Seashore. pp. 18006-7, 18010-8
7. ROADS. The Subcommittee on Roads of the Public Works Committee voted to report to the full committee S. J. Res. 137, to authorize studies and surveys relative to a highway construction program in Alaska. p. D826

SENATE

8. COTTON TEXTILE IMPORTS. Sen. Thurmond criticized the decision of the Tariff Commission rejecting the request of this Department for imposition of an "equalization fee" on cotton-textile imports and inserted a Wall Street Journal analysis of the Commission's action. pp. 17900-01
9. FARM LABOR. Agreed to the House amendment to S. 1130, to authorize the appropriation of up to \$3 million a year for fiscal years 1963, 1964, and 1965 to the Public Health Service to make grants to public and other nonprofit agencies for paying part of the cost of establishing and operating family health service clinics and special projects to improve health services for and the health conditions of domestic agricultural migratory workers and their families. This bill will now be sent to the President. pp. 17969-8
10. INFORMATION. Sen. Williams, Del., inserted several articles discussing the book, "Washington Cover-up," regarding the executive privilege in withholding information from the Congress, including a reference to the Estes case. pp. 17903-5
11. SCHOOL LUNCH. Sen. Javits submitted amendments intended to be proposed to H. R. 11665, to revise the formula for apportioning cash assistance funds among the States under the school lunch program. p. 17893
12. FORESTRY. The Interior and Insular Affairs Committee reported with amendment S. 3335, to revise the boundaries of the Big Hole Battlefield National Monument, Mont., including the transfer of land from the Beaverhead National Forest to the Monument (S. Rept. 2024). p. 17892
13. PUBLIC WORKS. Sen. Randolph commended passage of the public works acceleration bill and inserted an editorial, "Unemployment Challenge." pp. 17905-6
14. MONOPOLIES. Sen. Kefauver inserted an article, "Antitrust is Probusiness." pp. 17906-8
15. FOREIGN AFFAIRS. Sen. Hickenlooper inserted an article, "The Unselfish American," that itemizes U. S. investments abroad, including those for agriculture. pp. 17908-11

such agencies will take appropriate action to prohibit the importation of whiskey designated as "bourbon whiskey" unless such whiskey is clearly labeled to show the country of origin as an integral part of the name.

There have been several attempts by foreign concerns to apply the distinctive name "bourbon" to foreign produced spirits. A few of such attempts succeeded in that such products were sold in the United States as "bourbon."

The Committee on Ways and Means believes that imported spirits designated as "bourbon" should also bear on the label, as an integral part of the name, the country of origin of such spirits. Since the designation "bourbon" carries with it the connotation of a U.S.-produced whisky, it is necessary to dispel this meaning when the product so designated is one which has not been produced in the United States. If the country of origin is shown as an integral part of the name on the label of such foreign-produced spirits, no inference of U.S. origin should be drawn from the designation as "bourbon."

[Mr. BYRNES of Wisconsin addressed the House. His remarks will appear hereafter in the Appendix.]

ESTIMATED INCOME TAX FOR FISHERMEN

Mr. MILLS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 6413) to extend to fishermen the same treatment accorded farmers in relation to estimated income tax, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 2, line 18, strike out "1961" and insert "1962".

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

CONFERENCE REPORT—MILITARY CONSTRUCTION APPROPRIATION BILL

Mr. CANNON. Mr. Speaker, I ask unanimous consent that the managers on the part of the House have until midnight to file a conference report on H.R. 12870, the military construction appropriation bill.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

Mr. ALBERT. Mr. Speaker, on behalf of the gentleman from North Carolina [Mr. COOLEY], I ask unanimous consent to take from the Speaker's desk

the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, with House amendments thereto, insist on the amendments of the House, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

The Chair hears none, and appoints the following conferees: Messrs. GRANT, HAGEN of California, JENNINGS, TEAGUE of California, and McINTIRE.

HOUR OF MEETING ON THURSDAY, SEPTEMBER 13

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that when the House adjourns tomorrow, Wednesday, it adjourn to meet at 11 o'clock on Thursday next.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

Mr. GROSS. Mr. Speaker, reserving the right to object, may I ask the gentleman why he is asking that we meet at 11 o'clock Thursday?

Mr. ALBERT. In order to expedite a rather heavy legislative program for the balance of the week.

Mr. GROSS. Does the gentleman mean that on Friday we will have 5 hours of general debate if we propose to call out the U.N. bond issue, and I hope it is called out—or to dispose, let me put it that way, dispose of the bond issue with 5 hours of general debate in one day?

Mr. ALBERT. No. It is certainly our hope that we will finish that bill by Friday.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

COMMITTEE ON ARMED SERVICES

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the Committee on Armed Services may sit during general debate on Thursday and Friday of this week.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

APPLICATION OF CERTAIN LAWS TO AMERICAN SAMOA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States, which was read:

To the House of Representatives:

In compliance with the request contained in the resolution of the House of Representatives (the Senate concurring therein), I return herewith H.R. 10062 entitled "An act to extend the application of certain laws in American Samoa."

JOHN F. KENNEDY.

THE WHITE HOUSE, September 11, 1962.

HIGHER INTEREST RATES ON FOREIGN TIME DEPOSITS

Mr. THORNBERRY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 780 and ask for its immediate consideration.

The Clerk read as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12080) to permit domestic banks to pay interest on time deposits of foreign governments at rates differing from those applicable to domestic depositors. After general debate, which shall be confined to the bill, and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking and Currency, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

[Mr. THORNBERRY addressed the House. His remarks will appear hereafter in the Appendix.]

Mr. SMITH of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SMITH of California asked and was given permission to revise and extend his remarks.)

Mr. SMITH of California. Mr. Speaker, my understanding of the bill H.R. 12080 is as just stated by the gentleman from Texas [Mr. THORNBERRY]. The rule is an open rule, with 1 hour of general debate on this measure.

The committee stated in their report that in the area covered by the bill where a foreign central banking function is involved the payment of a higher rate of interest than is paid by private depositors is justified as being in the public interest.

There is a minority report filed by the gentleman from Ohio [Mr. VANIK] in which he reviews his objections to some of the reasons the proponents advance for this measure. His final conclusion is that this legislation has no substantial effect on the balance-of-payments problem, and he seriously questions whether this legislation is in the public interest.

Personally, I do not claim to be knowledgeable on this particular subject, and I shall listen to the debate relative thereto. However, I know of no objection to the rule.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. SMITH of California. I yield to the gentleman from Iowa.

Mr. GROSS. I do not know whether the gentleman from California can answer this question or not, but what interest rate is proposed to be paid?

Mr. SMITH of California. There is no ceiling. The ceiling is taken off completely. I stand to be corrected by the

gentleman from Texas [Mr. PATMAN] if my statement is wrong.

Mr. PATMAN. Within legal limits, it is up to each bank to pay interest and the banks will not pay any unreasonable rate, I am sure, because it would be uneconomic.

Mr. GROSS. Mr. Speaker, will the gentleman from California yield so that I may ask the gentleman from Texas a question?

Mr. SMITH of California. I will yield whatever time is necessary to the gentleman.

Mr. GROSS. May I ask the gentleman from Texas what is the prevailing rate now on these foreign deposits?

Mr. PATMAN. I would say about 3½ percent or 3 percent. I do not know for sure, but it is in that range of 3 percent to 3½ percent.

Mr. GROSS. So then you must plan to increase the interest rate by at least 1 percent or more in order to lend any attractiveness to the interest rate in the hope of keeping some of the money in this country. How much does the gentleman think it will be necessary to increase it?

Mr. PATMAN. I do not know whether they will have to increase the rate at all. There is no movement of gold now to amount to anything so, evidently, the rate must be satisfactory as it is now. A lot of this money is here for business reasons anyway.

Mr. GROSS. The gentleman well knows that 3½ percent is not attractive to some foreign countries; does he not?

Mr. PATMAN. Of course, in some countries 25 percent would not be, but we are not trying to compete with them.

Mr. GROSS. The gentleman knows, I am sure, that Argentina had money on deposit in this country in 1960 and 1961 and they were reportedly drawing 3½ percent interest on it. Yet, Argentina turned those dollars in and got gold for it to the extent of \$150 million and, at this time, incidentally, we were increasing foreign aid to Argentina—which does not make a nickel's worth of sense either. The gentleman knows, I am sure, that 3½ percent is not going to hold money in this country on the basis of the experience we have had heretofore.

Mr. PATMAN. I do not know the exact rate, but I believe it will hold it now.

Mr. GROSS. It did not hold Argentina.

Mr. PATMAN. Well, Argentina had another ax to grind besides that. You know gold does not draw interest, but deposits draw interest and it is not much inducement to a country to have a deposit here to draw the gold out, just for that reason alone because gold is a burden to them. They have to pay security charges and they have to pay insurance charges of all kinds and they get no interest on it. It is just dead weight.

Mr. GROSS. If gold is such a burden—why is it going out at the rate of \$500 million a clip.

Mr. PATMAN. That has to be considered in its relation to other problems and it is a relative matter.

Mr. GROSS. Perhaps, we can get into some more of this later in general debate, but I am not now convinced that this bill is in the interest of this country.

Mr. THORNBERRY. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the adoption of the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PADRE ISLAND NATIONAL SEASHORE

Mr. THORNBERRY. Mr. Speaker, by direction of the Committee on Rules, I call up the resolution, House Resolution 776, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 4) to provide for the establishment of the Padre Island National Seashore. After general debate, which shall be confined to the bill, and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the substitute amendment recommended by the Committee on Interior and Insular Affairs now in the bill and such substitute for the purpose of amendment shall be considered under the five-minute rule as an original bill. At the conclusion of such consideration the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any member may demand a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the bill or committee substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommend with or without instructions.

CALL OF THE HOUSE

Mr. GROSS. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore (Mr. ALBERT). Evidently, a quorum is not present.

Mr. THORNBERRY. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 211]

Abbitt	Bass, N.H.	Burke, Ky.
Addabbo	Beermann	Cahill
Alexander	Berry	Carey
Andersen,	Betts	Celler
Minn.	Blitch	Chelf
Arends	Boland	Chipperfield
Ashbrook	Bonner	Church
Ashley	Boykin	Clancy
Aspinall	Brademas	Coad
Avery	Brewster	Cohelan
Ayres	Bromwell	Collier
Bailey	Broomfield	Conte
Baring	Brown	Cook
Barrett	Buckley	Cooley

Corbett	Kastenmeier	Pilcher
Corman	Kearns	Powell
Cramer	Kee	Rains
Curtis, Mass.	Keith	Reece
Davis,	Kelly	Reifel
James C.	Keogh	Rhodes, Ariz.
Denton	Kilburn	Riley
Derwinski	King, Utah	Roberts, Ala.
Devine	Kitchin	Rogers, Colo.
Diggs	Kluczynski	Rogers, Tex.
Dominick	Kowalski	Rosenthal
Donohue	Kunkel	Kostenkowski
Dooley	Laird	Roudebush
Dorn	Landrum	Roussetot
Dulski	Lane	St. George
Durno	Lankford	St. Germain
Elliott	Latta	Saund
Ellsworth	Loser	Saylor
Farbstein	McCulloch	Schadeberg
Fascell	McDonough	Scherer
Findley	McSweeney	Schweiker
Finnegan	McVey	Scranton
Flynt	Macdonald	Seely-Brown
Frazier	MacGregor	Shelley
Fulton	Madden	Shipley
Gary	Magnuson	Short
Gathings	Mailliard	Smith, Iowa
Gilbert	Martin, Mass.	Smith, Miss.
Goodling	Martin, Nebr.	Stafford
Green, Pa.	Morrow	Stephens
Griffiths	Miller, Clem	Stratton
Hagan, Ga.	Miller,	Thomas
Hagen, Calif.	George P.	Thompson, La.
Hall	Milliken	Thompson, N.J.
Halleck	Montoya	Thomson, Wis.
Harding	Moorehead,	Trimble
Harris	Ohio	Vanik
Harrison, Va.	Morris	Van Zandt
Harrison, Wyo.	Morrison	Vinson
Harsha	Morse	Waggonner
Hays	Mosher	Wallhauser
Healey	Moulder	Walter
Hébert	Nedzi	Weaver
Henderson	Nelsen	Weiss
Hoffman, Ill.	Nix	Westland
Hoffman, Mich.	Norblad	Whalley
Ichord, Mo.	Norrell	Wharton
Inouye	O'Brien, Ill.	Wickersham
Jarman	O'Brien, N.Y.	Wilson, Calif.
Jennings	O'Hara, Mich.	Wilson, Ind.
Johnson, Md.	O'Konski	Yates
Jones, Ala.	O'Neill	Zablocki
Jones, Mo.	Osmer	Zelenko
Judd	Pfost	
Karth	Philbin	

The SPEAKER pro tempore (Mr. ALBERT). On this rollcall 234 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

[Mr. THORNBERRY addressed the House. His remarks will appear hereafter in the Appendix.]

Mr. SMITH of California. Mr. Speaker, I yield myself such time as I may consume.

[Mr. SMITH of California asked and was given permission to revise and extend his remarks.]

Mr. SMITH of California. Mr. Speaker, as stated by the gentleman from Texas, this is an open rule and provides for the consideration of S. 4, with 1 hour of general debate.

It is my understanding that the explanation of the bill is precisely the same as that given by the gentleman from Texas [Mr. THORNBERRY], and I associate myself with his remarks.

In addition, there are a few things in the committee report on which I should like to comment. S. 4 as it originally came to the House provided for the appropriation of \$4 million for this land acquisition. The amendment of the House committee has increased it to \$5 million.

The bulk of the fast lands to be acquired are in the ownership of nine corporations and individuals. The sub-

9. TEXTILES. Sen. Thurmond inserted a Gaffney, S.C., Chamber of Commerce resolution requesting the President "to exert all force necessary to expedite handling of the unresolved portions of his seven-point textile program." pp.18415-6
10. ADJOURNMENT. Sen. Mansfield stated there was a good chance Congress would adjourn sine die by the end of Sept., but if necessary would continue into Oct. to enact the President's legislative program. pp. 18418-9
11. LEGISLATIVE PROGRAM. Sen. Mansfield announced that the foreign trade bill will be taken up Mon., Sept. 17 (p. 18425). Sen. Humphrey stated that the following bills will be considered on Mon. or soon thereafter: H. R. 11665, school lunch fund apportionment bill, H. R. 12628, housing for the elderly in rural areas, and H. R. 12135, the roads bill (p. 18443).
12. ADJOURNED until Mon., Sept. 17. p. 18444

HOUSE

13. APPROPRIATIONS. The "Daily Digest" states that "Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of H. R. 12648, fiscal 1963 appropriations for the Department of Agriculture. It was announced that the report will be filed in the House on Monday, September 17." p. D846
- Received the conference report on H. R. 12711, the independent offices appropriation bill (H. Rept. 2376). The conference report provides for \$5,000,000 for the Office of Emergency Planning for civil and defense mobilization functions of Federal agencies, \$750,000 for the Office of Science and Technology, \$4,200,000 for Government payment for annuitants' health benefits fund, and \$181,200,000 for operating expenses of the Public Buildings Service, GSA. pp. 18382-7, 18413
14. PERSONNEL. Rep. Hechler said, "If ever there was a man for whom the adjective 'dedicated' was designed, it is Charles S. Murphy, Under Secretary of Agriculture," and inserted an article, "Charles S. Murphy: Fall Guy in Senate Estes' Probe--Refused to Fall." pp. 18408-9
- The Post Office and Civil Service Committee reported with amendment H.R. 10706, to amend the Civil Service Retirement Act so as to provide for increases in annuities, eliminate the option with respect to certain survivor annuities, and provide for interchange of credits between the civil service retirement system and the insurance system established by title II of the Social Security Act (H. Rept. 2374). The "Daily Digest" states that "Major features of H. R. 10706 are as follows: 1. 7½-percent increase in annuities and survivor benefits effective January 1, 1963, with a minimum of \$120 for widows of employees who served 20 years; 2. Gradually reduced percentage increase for those retiring in the next 4 years; 3. Arbitrary "ceilings" in P.L. 555, 82nd Congress, and P.L. 369, 84th Congress, are removed (\$2,160 and \$4,104 ceilings); 4. Future annuity adjustments when the Consumer Price Index rises by 3 percent or more; 5. The minimum 2½ percent annuity reduction for providing survivor benefits is extended to the first \$3,600 of annuity, rather than the present \$2,400; 6. The ratio of survivor benefits to basic annuities is increased from 50 to 55 percent; and 7. Retiree survivor benefits will be automatic unless the retiree elects not to so provide otherwise." pp. 18413, D845
- The Post Office and Civil Service Committee voted to report (but did not actually report) S. 1070, to amend the Federal Employees Group Life Insurance Act of 1954, as amended, so as to provide for an additional unit of life insurance. p. D845

15. CENSUS. The Post Office and Civil Service Committee voted to report (but did not actually report) with amendment H. R. 10569, to amend title 13, U.S.C. to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis. p. D845
16. PERISHABLE COMMODITIES. The "Daily Digest" states that "Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of S. 1037, proposed Perishable Agricultural Commodities Act of 1962." p. D846
17. OCEANOGRAPHY. Conferees were appointed on S. 901, the proposed Marine Sciences and Research Act of 1962. Senate conferees have already been appointed. pp. 18372-3
18. ATOMIC ENERGY. Agreed to the conference report on H. R. 11974, the AEC authorization bill. The Senate has not yet acted on the report. pp. 18373-81
19. RESEARCH. Rep. Bow discussed the importance of the Ohio Agricultural Experiment Station and described it in detail. p. 18398
20. COMMON MARKET. Rep. Bell inserted a number of articles and editorials favorable to the Common Market. pp. 18398-400
21. SMALL BUSINESS. Rep. Multer inserted a statement commending the set-aside program of the Small Business Administration for construction contracts. pp. 18404-8
22. ROADS. The Public Works Committee reported without amendment S. J. Res. 137, to authorize the Secretary of Commerce, in cooperation with Alaska, to undertake studies and surveys relative to a highway construction program for Alaska (H. Rept. 2371). p. 18413
23. FOOD ADDITIVES. Rep. Fogarty discussed his bill to relieve manufacturers of losses incurred when certain red food colors were decertified by the Food and Drug Commission. p. 18409
24. LEGISLATIVE PROGRAM. Rep. Albert announced the following legislative program: Mon., Consent Calendar and the following suspensions, H. R. 12833, to extend the Air Pollution Control Act; H. R. 12434, to facilitate the work of the Forest Service; H. R. 12653, to amend the Consolidated Farmers Home Administration Act of 1961; H. R. 12802, cooperation with States on agricultural programs; and H. R. 12855, tobacco acreage allotments. Tues., S. 2429, revision of the Virgin Islands National Park boundaries; and the conference report on H. R. 12711, the independent offices appropriation bill. Thurs., the foreign assistance appropriation bill. pp. 18381-2
25. ADJOURNED until Mon. Sept. 17. p. 18413

ITEMS IN APPENDIX

26. OPINION POLLS. Extension of remarks of Rep. Shriver inserting results of a questionnaire sent to his constituents. p. A6821
27. PUBLIC WORKS. Extension of remarks of Rep. Knox expressing hope that passage of the public works acceleration bill will aid unemployment throughout the Nation. p. A6824

PUBLIC ASSISTANCE

Committee on District of Columbia: Subcommittee No. 1, in executive session, ordered reported favorably to the full committee S. 914 (amended), to provide for more effective administration of the public assistance, and to make certain relatives responsible for support of needy people.

Prior to taking action on the measure, in an open hearing the subcommittee heard testimony from a D.C. official.

URBAN RENEWAL

Committee on the District of Columbia: Subcommittee on Urban Renewal met in executive session on H.R. 12713, to amend the D.C. Redevelopment Act of 1945.

SHARPE GENERAL DEPOT—CALIFORNIA

Committee on Government Operations: Subcommittee on Executive and Legislative Reorganization concluded hearings on the construction of an airfield at Sharpe General Depot, Lathrop, Calif., and heard testimony from a Department of the Army witness.

HOME LOAN BANK BOARD

Committee on Government Operations: Subcommittee on Federal Home Loan Bank Board met in executive session on pending business.

PUBLIC LANDS

Committee on Interior and Insular Affairs: Subcommittee on Public Lands ordered reported favorably to the full committee H.R. 12473, to release the right, title, or interest, if any, of the U.S. in certain streets in the village of Heyburn, Idaho, and to repeal the reverter in patent and public reserves.

Prior to taking action on the bill the subcommittee heard testimony from a departmental witness.

COMMITTEE BUSINESS

Committee on Interstate and Foreign Commerce: Met in executive session on pending legislation. No announcements were made.

NATIONAL CULTURAL CENTER WEEK

Committee on the Judiciary: Subcommittee No. 4, in executive session, ordered reported favorably to the full committee S.J. Res. 214, to authorize the President to designate the period from November 26, 1962, through December 2, 1962, as National Cultural Center Week.

Prior to taking action held an open hearing on S.J. Res. 214, H.J. Res. 847, H.J. Res. 850, and H.J. Res. 863, identical measures (title above). Heard testimony from Representative Thompson of New Jersey (H.J. Res. 847).

COMMITTEE BUSINESS

Committee on Post Office and Civil Service: The committee, in executive session, ordered the following bills reported favorably to the House:

H.R. 10569 (amended), to amend title 13, United States Code, to preserve the confidential nature of copies of information filed with the Bureau of the Census on a confidential basis;

S. 1070, to amend the Federal Employees Group Life Insurance Act of 1954, as amended, so as to provide for an additional unit of life insurance; and

H.R. 10706 (amended), to amend the Civil Service Retirement Act so as to provide for increase in annuities, eliminate the option with respect to certain survivor annuities. Major features of H.R. 10706 are as follows: 1. 7½-percent increase in annuities and survivor benefits effective January 1, 1963, with a minimum of \$120 for widows of employees who served 20 years; 2. Gradually reduced percentage increase for those retiring in the next 4 years; 3. Arbitrary "ceilings" in P.L. 555, 82d Congress, and P.L. 369, 84th Congress, are removed (\$2,160 and \$4,104 ceilings); 4. Future annuity adjustments when the Consumer Price Index rises by 3 percent or more; 5. The minimum 2½ percent annuity reduction for providing survivor benefits is extended to the first \$3,600 of annuity, rather than the present \$2,400; 6. The ratio of survivor benefits to basic annuities is increased from 50 to 55 percent; and 7. Retiree survivor benefits will be automatic unless the retiree elects not to so provide otherwise.

FLOOD CONTROL

Committee on Public Works: Subcommittee on Flood Control held a hearing on title II of the omnibus rivers and harbors and flood control bill, with regard to the new Melones Dam, Calif. Heard testimony from Corps of Engineers officials; and public witnesses.

INTERNAL REVENUE—CHILD CARE EXPENSES

Committee on Ways and Means: Met in executive session and ordered reported favorably to the House H.R. 12470, to amend the Internal Revenue Code of 1954 to provide that the deduction for child care expenses shall be available to a wife who has been deserted by and cannot locate her husband on the same basis as a single woman.

EXPORT CONTROL ACT

Select Committee on Export Control: Held a discussion of policies followed since the amendment of the Export Control Act and steps taken to implement recommendations of the Select Committee on Export Control. Heard testimony from Dr. Jack N. Behrman, Assistant Secretary for International Affairs, accompanied by other Department of Commerce officials.

Joint Committee Meetings

SPACE PROGRAM

Joint Committee on Atomic Energy: Committee resumed, in executive session, its hearings on progress in the development of nuclear rockets and other atomic energy devices for use in the Nation's space program, having as its witnesses Dr. Frank Pittman, Director, Division of Reactor Development, AEC; Brockway McMillan, Assistant Secretary of Air Force for Research and Development; Harold Finger, Director of Nuclear Systems, NASA; Walter Doll, manager of nuclear systems, Pratt & Whitney Aircraft; V. E. Blake, Nuclear Space Department, Sandia; Dr. Jerome G. Morse, director, Auxiliary Power Systems Department, Martin-Marietta Co.; and Dr. A. B. Martin, vice president, Compact Systems Division, Atomics International.

Hearings continue on Wednesday, September 19.

BILLS SIGNED BY THE PRESIDENT

New Laws

(For last listing of public laws, see DIGEST, p. D840, September 13, 1962)

S. 2965, Public Works Acceleration Act. Signed September 14, 1962 (P.L. 87-658).

S. 3221, providing for the exchange of certain lands in Puerto Rico with the San Juan Darlington, Inc. Signed September 14, 1962 (P.L. 87-659).

S. 2421, to provide for retrocession of legislative jurisdiction over the U.S. Naval Supply Depot Clearfield,

APPROPRIATIONS—AGRICULTURE

Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 12648, fiscal 1963 appropriations for the Department of Agriculture. It was announced that the report will be filed in the House on Monday, September 17.

APPROPRIATIONS—INDEPENDENT OFFICES

Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of H.R. 12711, fiscal 1963 appropriations for independent offices.

PERISHABLE AGRICULTURAL COMMODITIES

Conferees, in executive session, agreed to file a conference report on the differences between the Senate- and House-passed versions of S. 1037, proposed Perishable Agricultural Commodities Act of 1962.

Ogden, Utah. Signed September 14, 1962 (P.L. 87-660).

S. 1878, to extend the boundaries of the Wasatch National Forest and add additional lands thereto. Signed September 14, 1962 (P.L. 87-661).

S. 1108, to convey certain property in San Diego to the University of California. Signed September 14, 1962 (P.L. 87-662).

S. 3628, authorizing appointment of citizens of Guam and the Virgin Islands to the U.S. service academies. Signed September 14, 1962 (P.L. 87-663).

CONGRESSIONAL PROGRAM AHEAD

Week of September 17-22

(Committee meetings are open unless otherwise indicated)

Senate Chamber

On Monday, Senate will take up H.R. 11970, trade expansion, and possibly numerous other bills listed under "Legislative Program" in Senate Chamber Action. On September 20, Senate will consider resolutions on Cuba to be reported then.

Senate Committees

Committee on Appropriations: September 17, and 19-21, subcommittee, on H.R. 12580, fiscal 1963 appropriations for the Departments of State, Justice, and Commerce, Monday at 10:30 a.m. and 2 p.m., room F-39, Capitol.

September 21, full committee, to continue its executive hearings on fiscal 1963 budget estimates for foreign aid, 10 a.m., 1223 New Senate Office Building.

Committee on Armed Services: September 17, see Committee on Foreign Relations;

September 17, Preparedness Investigating Subcommittee, executive, on arms control and disarmament matters, to hear William C. Foster, Director, Arms Control and Disarmament

Agency, and Paul H. Nitze, Assistant Secretary of Defense for International Security Affairs, 2 p.m., 224 Old Senate Office Building.

Committee on Commerce: September 17, on S. 3615, mass transportation bill, 10 a.m., 5110 New Senate Office Building;

September 21, on the nomination of E. William Henry, of Tennessee, to be a member of the FCC, 10 a.m., 5110 New Senate Office Building.

Committee on Foreign Relations: September 17, to meet jointly in executive session with the Committee on Armed Services, on various resolutions pertaining to Cuba, to hear Secretary of State Rusk and Secretary of Defense McNamara, 10:30 a.m., 318 Old Senate Office Building;

September 17, Subcommittee on American Republics Affairs, executive, to meet with Ambassador to the OAS deLesseps Morrison to discuss Cuba, and other matters, 4:30 p.m., room F-53, Capitol.

Committee on Government Operations: September 18, Subcommittee on Intergovernmental Relations, executive, on subcommittee business, 10 a.m., to be followed by hearings on problems in the field of Federal-State-local relations, 10:30 a.m., 3302 New Senate Office Building.

Committee on Interior and Insular Affairs: September 17, executive, on H.R. 11590 (S. 3250), providing for the per capita distribution of judgment funds to the Cherokee Indians of Oklahoma, 10 a.m., 3112 New Senate Office Building.

expeditious and orderly conduct of the loan program. p. 18606

Began debate on amendment No. 19, to provide \$1,600,000 for AMS for construction of facilities and acquisition of the necessary land therefor, as authorized by law, to remain available until expended. pp. 18602-6

13. INDEPENDENT OFFICES APPROPRIATION BILL, 1963. Agreed to the conference report on this bill, H. R. 12711, but insisted on disagreement to several of the Senate amendments. pp. 18591-5
14. LEGISLATIVE BRANCH APPROPRIATION BILL, 1963. Began debate on the conference report on this bill, H. R. 11151. Action on one Senate amendment in disagreement was deferred. pp. 18606-10
15. FOREIGN AID APPROPRIATION BILL, 1963. The Appropriations Committee reported this bill, H. R. 13175 (H. Rept. 2410). p. 18639
16. LOANS; FHA. Passed as reported H. R. 12653, to amend the Consolidated Farmers Home Administration Act of 1961 in order to increase from \$150 million to \$200 million annually the amount of loans which may be insured under such Act. pp. 18611-2
Rep. Curtis, Mo., criticized the House procedures under which this bill failed to pass on Sept. 17. pp. 18595-6
17. WETLANDS. Concurred in the Senate amendments to H. R. 8520, to amend the Soil Conservation and Domestic Allotment Act, as amended, to add a new subsection to Sec. 16 to limit financial and technical assistance for drainage of certain wetlands. This bill will now be sent to the President. pp. 18590-1
18. TOBACCO. Passed as reported H. R. 12855, to amend provisions of the Agricultural Adjustment Act of 1938 providing for the lease and transfer of tobacco acreage allotments so as to exclude cigar-filler and cigar-binder tobacco, types 42,43,44,53,54 and 55 from the lease and transfer authority. pp. 18612-3
19. COOPERATION. Began debate on S. 3475, to authorize the Secretary of Agriculture to cooperate with States in administration and enforcement of certain Federal laws relating to the marketing of agricultural products and to the eradication or control of plant and animal disease and pests. (p. 18622). A similar bill, H. R. 12802, was passed without amendment earlier (pp. 18613-4).
20. PARKS. Began and concluded debate on S. 2429, to revise the boundaries of the Virgin Islands National Park, St. John, V.I. pp. 18615-22
21. PERISHABLE COMMODITIES. Received the conference report on S. 1037, to amend the Perishable Agricultural Commodities Act regarding fees, oral hearings, and relicensing (H. Rept. 2408). pp. 18622-3, ~~18639~~
22. TARIFFS. Received the conference report on H. R. 6682, to provide for the exemption of fowling nets from duty (H. Rept. 2412). pp. 18623-4, 18639
23. PERSONNEL. Received the conference report on H. R. 12180, to extend for a temporary period the existing provisions of the law relating to the free importation of personal and household effects brought into the U. S. under Government orders (H. Rept. 2413). pp. 18624, 18639
The Post Office and Civil Service Committee reported without amendment S. Con Res. 53, favoring travel by Federal employees on U.S. flag carriers (H. Rept. 2407). p. 18639

24. RECLAMATION. Rep. Olsen discussed the "60th anniversary of the Bureau of Reclamation, pioneering Federal public works agency which is still playing a prominent role in water resource development in Montana and elsewhere in the West," including its relationship with REA cooperatives. pp. 18636-8
25. MERCHANT MARINE AND FISHERIES COMMITTEE. The "Daily Digest" states that the Subcommittee on Fisheries and Wildlife Conservation of the Merchant Marine and Fisheries Committee "met in executive session and ordered reported favorably to the full committee H. R. 9547, regarding importation of salmon for sale within the U.S.; H. R. 11343 (amended), regarding the initiation of a salmon and steelhead development program in California; S. 3504 (amended), regarding representation of secretarial officers on the Migratory Bird Conservation Commission; and S. 3431, to consent to the amendment of the Pacific Marine Fisheries Compact. Passed over H. R. 10714, to provide for the distribution of the total net income from wildlife refuges administered by the U.S. Fish and Wildlife Service of the Department of the Interior." p. D860
26. AGRICULTURAL APPROPRIATION BILL, 1963. Attached to this Digest are additional notes relating to the tables in Digest 167 summarizing the action of the conferees on this bill, H. R. 12648. These notes were inadvertently omitted and should be attached to Digest 167 as page 12.

ITEMS IN APPENDIX

27. FARM PROGRAM. Extension of remarks of Sen. Hartke inserting an address by Claude R. Wickard, "Knowledge: The Key to a Century of Agricultural Progress." pp. A6890-2
Extension of remarks of Rep. May inserting reports by international farm youth delegates in Germany and Poland describing conditions on farms in those countries. pp. A6900, A6907-8
28. ELECTRIFICATION. Extension of remarks of Sen. Wiley inserting an article, "America's Power System," comparing production of electrical power in the United States and the Soviet Union. p. A6893
29. HOLIDAY. Extension of remarks of Rep. Green inserting an editor's letter protesting the proposed designation of Sept. 17 as a legal holiday. pp. A6899-900
30. MILK. Extension of remarks of Rep. Quie inserting an article suggesting a possible solution to some of the problems of the dairy industry, including an increase in advertising efforts. p. A6903

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COMMITTEE HEARINGS SEPT. 19:

Additional research facilities for experiment stations, S. Agriculture.

Federal pay bill, S. Civil Service (exec).

Watershed projects, H. Agriculture (exec).

Promotion of trade through mobile trade fairs, H. Merchant Marine and Fisheries (exec).

AMENDMENTS TO PERISHABLE AGRICULTURAL COM- MODITIES ACT, 1930

SEPTEMBER 18, 1962.—Ordered to be printed

Mr. GRANT, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1037]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, and agree to the same.

Amendment numbered 1:

That the Senate recede from its disagreement to the amendment of the House numbered 1, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That paragraphs (6) and (7) of the first section of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), are amended to read as follows:

“(6) The term ‘dealer’ means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a ‘dealer’ in respect to sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a ‘dealer’ until the invoice cost of his purchases of perishable agricultural commodities in any calendar year are in excess of \$90,000; and (C) no person buying any commodity for canning and/or processing within the State where grown shall be considered a ‘dealer’ whether or not the canned or processed product is to be shipped in interstate or foreign

commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph (4) of this section. Any person not considered as a 'dealer' under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a 'dealer';

"(7) The term 'broker' means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a 'broker' if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of \$90,000 in any calendar year."

SEC. 2. The first section of such Act (7 U.S.C. 499a) is further amended by adding at the end thereof the following new paragraphs:

"(9) The term 'responsibly connected' means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

"(10) The terms 'employ' and 'employment' mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment."

And the House agree to the same.

GEORGE M. GRANT,
HARLAN HAGEN,
W. PAT JENNINGS,
CHARLES M. TEAGUE,
CLIFFORD G. MCINTIRE,

Managers on the Part of the House.

ALLEN J. ELLENDER,
OLIN D. JOHNSTON,
SPESSARD L. HOLLAND,
GEORGE D. AIKEN,
MILTON R. YOUNG,

Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The only matter in disagreement between the Senate bill and the House amendments was the treatment to be accorded persons subject to the act solely by reason of their activities as retail dealers or frozen food brokers. The Senate limited the license fee which could be charged retail dealers and frozen food brokers to \$25 a year. The House permitted the license fee for retail dealers to be increased to a maximum of \$50, as provided by the bill for other licensees; but excluded retail dealers whose purchases of perishable agricultural commodities did not exceed \$100 thousand a year from the requirements of the act, and excluded all frozen food brokers who represent sellers only. At present a retail dealer is subject to licensing if he buys as much as a ton of perishable agricultural commodities on each of 21 days during any calendar year, and a frozen food broker is subject to licensing if he negotiates the purchase or sale of any frozen fruits or vegetables. The committee of conference recommends that retail dealers purchasing less than \$90 thousand a year worth of perishable agricultural commodities, and frozen food brokers representing sellers only and negotiating sales of less than \$90 thousand a year worth of frozen fruits and vegetables, be excluded from the requirements of the act.

The number of retailers and frozen food brokers now subject to license and the number which the Department of Agriculture estimates would be subject to license under House amendment No. 1 and the conference substitute therefore are as follows:

RETAILERS

At present, 3,528 retailers out of more than 230,000 are licensed. With a \$90,000 standard, about 1,200 would be licensed. With a \$100,000 standard, about 1,125 would have been licensed.

FROZEN FOOD BROKERS

At present 475 such brokers are licensed. With a \$90,000 standard, about 260 would be licensed.

The House made 12 amendments to the Senate bill. The committee of conference recommends that the Senate recede from its disagreement to the House amendments numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 and that the Senate recede from its disagreement to House amendment No. 1 and agree to the same with an amendment.

House amendment No. 1 excluded retail dealers purchasing not more than \$100 thousand worth of perishable agricultural commodities a year, and all frozen food brokers representing sellers only from the requirement of the act. The conference substitute would exclude retail dealers purchasing not more than \$90 thousand worth of perishable agricultural commodities a year, and frozen food brokers representing sellers only and negotiating not more than \$90 thousand worth of frozen fruits and vegetables a year.

House amendment No. 3 struck out the Senate provision limiting the license fee for retail dealers and frozen food brokers to \$25 a year. In view of the recommendation of the conference committee with respect to the exclusion of the smaller retail dealers and frozen food brokers, those that would remain subject to the act should be required to pay the same fee as other licensees, and the committee of conference therefore recommends that the Senate recede from its disagreement to amendment No. 3. The present maximum license fee under the act is \$25. The bill would raise the maximum license fee to \$50. During the hearings on the bill the Department indicated that for the first year it was not anticipated that the license fee would be more than \$36. The conferees would expect the Department to exert every effort to keep the fee within this figure and that the exclusion of the smaller retailers and frozen food brokers would not require an increase above this figure.

Amendments numbered 2, 4, 5, 6, 7, 8, 9, 10, 11, and 12 merely change section numbers to reflect the insertion of a new section 1 in the bill by House amendment No. 1. In view of the conference committee recommendation with respect to amendment No. 1, it recommends that the Senate recede from its disagreement to these technical amendments.

GEORGE M. GRANT,
HARLAN HAGEN,
W. PAT JENNINGS,
CHARLES M. TEAGUE,
CLIFFORD G. MCINTIRE,

Managers on the Part of the House.



Governor of the Island, Governor Palewonsky. I learned that their one great concern was the condemnation provision. Such a provision is a very common feature, and under ordinary circumstances a very necessary feature, of Federal legislation of this sort. Nevertheless, in view of the misunderstanding and in view of the fact that there has not been sufficient time for us to make clear to the Virgin Islanders what it does involve and what it does not, it seems wise to me, in view of the statement I have made today, to propose an amendment to eliminate the condemnation feature. I told them that I would offer an amendment to accomplish this purpose and they assured me that if such an amendment were adopted the bill would be satisfactory to them. I shall do so at the proper time.

In conclusion I might say this to those who are concerned with the cost, that we are getting a tremendous bargain. Mr. Laurance Rockefeller has expended \$4 million. Under provisions of title 2 he asks permission to donate \$1,250,000 more. The sum and substance is this: The Federal Government and the American public will receive a national park costing \$6.5 million at a cost of \$1,250,000. I think we ought to accept this bargain. I think we ought to accept the generosity of a great man, a man who has made such great contributions to the development of this Nation.

[Mr. WESTLAND addressed the Committee. His remarks will appear hereafter in the Appendix.]

Mr. RUTHERFORD. Mr. Chairman, I yield myself 5 minutes in order to respond to the questions of the gentleman from Iowa.

Mr. KYL. I thank the gentleman for yielding.

I simply want to clarify one point. Members might be wondering why the name of Laurance S. Rockefeller comes into this discussion. The objections which Mr. Rockefeller expressed to the original form of this bill, incidentally, were not expressed in any arbitrary fashion. He is simply one citizen expressing his opinion in the same way as every other citizen has the right to express any opinion on a bill of any kind that comes before the Congress of the United States.

I do want to say further that his name must be mentioned prominently whenever we talk about national parks and conservation in the United States because he and his associates in the Rockefeller Foundation have contributed so much materially and otherwise to the park system in such instances as the Acadia National Park and the Grand Teton area and in addition, of course, to the Virgin Islands area. It was my privilege to serve for the time I have been in the Congress on the Outdoor Recreation and Resources Review Commission of which Mr. Rockefeller was the Chairman. I can say that during this entire period, his entire effort was given to that Commission in the most unselfish, patriotic, and diligent fashion that anyone could possibly imagine.

Mr. Chairman, in order to clarify the reason that his name comes up in this discussion, I wish to restate again that any opposition which he expressed was certainly not an arbitrary opposition but was an expression of a citizen to the Congress of the United States.

Mr. RUTHERFORD. I appreciate the statement made by the gentleman from Iowa. I might further state in addition to the Acadia National Park that the gentleman mentioned, and Jackson Hole, Grand Teton, I might even go further and point out the Williamsburg restoration as well as Cape Hatteras in North Carolina and a million dollars to the shoreline study that was made as a result of this study which was commonly referred to as the vanishing shorelines of Cape Hatteras and that Cape Cod, Point Reyes, as well as Padre Island, was the result of this contribution and many other contributions of Mr. Laurance Rockefeller in behalf of conservation. I do appreciate the gentleman bringing his great contribution to conservation to the attention of the House. As the gentleman from Pennsylvania stated, possibly no man in the Nation has the material wealth that he has been blessed with has invested it in behalf of the people of this Nation in the field of conservation. Others have made great contributions and have given their all to conservation, but have not had the opportunity of the financial wealth that Mr. Rockefeller has, but all have made great contributions. I think we should accept this bargain of \$6½ million national park for \$1¼ million, and I think we ought to grab the bargain in a hurry.

The CHAIRMAN. If there are no further requests for time, the Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in furtherance of the purposes of the Act of August 2, 1956 (70 Stat. 940), as amended, providing for the establishment of the Virgin Islands National Park, and in order to preserve for the benefit of the public significant coral gardens, marine life, and seascapes in the vicinity thereof, the boundaries of such park, subject to valid existing rights, are hereby revised to include the adjoining lands, submerged lands, and waters described as follows:

NORTH OFFSHORE AREA

Beginning at the hereinafter lettered point A on the shore of Cruz Bay, a corner in the Virgin Islands National Park boundary, being also a corner of lot F, Cruz Bay, added to the park by order of designation signed June 29, 1960, by the Assistant Secretary of the Interior pursuant to the Act of August 2, 1956 (70 Stat. 940), and published in the Federal Register of July 7, 1960, the said corner being the terminus of the course recited therein as "north 58 degrees 50 minutes west a distance of 20.0 feet, more or less, along Government land to a point;" for the third call in the metes and bounds description lot F, Cruz Bay.

From the initial point A, distances in nautical miles, along direct courses between the hereinafter lettered points at geographic positions (latitudes north, longitudes west):

Northwestward, approximately 0.13 mile to point B, latitude 18 degrees 20 minutes 08 seconds, longitude 64 degrees 47 minutes 43 seconds in Cruz Bay;

0.43 mile to point C, latitude 18 degrees 20 minutes 08 seconds, longitude 64 degrees 48 minutes 10 seconds in Pillsbury Sound;

1.36 miles to point D, latitude 18 degrees 21 minutes 30 seconds, longitude 64 degrees 48 minutes 10 seconds in Windward Passage;

1.64 miles to point E, latitude 18 degrees 22 minutes 10 seconds, longitude 64 degrees 46 minutes 35 seconds in the Atlantic Ocean;

1.99 miles to point F, latitude 18 degrees 22 minutes 45 seconds, longitude 64 degrees 44 minutes 35 seconds in the Narrows;

3.18 miles to point G, latitude 18 degrees 22 minutes 00 seconds, longitude 64 degrees 41 minutes 20 seconds in Sir Francis Drake Channel;

1.04 miles to point H, latitude 18 degrees 21 minutes 10 seconds, longitude 64 degrees 40 minutes 40 seconds in Haulover Bay;

Southwestward approximately 0.22 mile to point I, a bound post on the shore of Haulover Bay marking a corner of the Virgin Islands National Park boundary as shown on drawing numbered NP-VI-7000 entitled "Acquisition Area Virgin Islands National Park", approved November 15, 1956, by the Acting Secretary of the Interior in accordance with the provisions of the Act of August 2, 1956, supra, being also the southeasterly corner of estate Haulover 5a and 5c east end quarter as delineated on the municipality of Saint Thomas and Saint John drawing PW file numbered 9-24-T51 dated October 26, 1950;

Thence running generally westward along the Virgin Islands National Park northerly boundary as it follows the northerly shore of the island of Saint John as shown on the said drawing numbered NP-VI-7000 and on drawing numbered NP-VI-7003 entitled "Land Ownership Cruz Bay Creek" depicting the boundary adjustment affected by the said order of designation to point A, the point of beginning.

The area described contains approximately 4,100 acres.

SOUTH OFFSHORE AREA

Beginning at the hereinafter lettered point L, a concrete bound post on the shore of Drunk Bay marking a northeasterly corner in the Virgin Islands National Park boundary as shown on the said drawing numbered NP-VI-7000, being also the northeasterly corner of parcel numbered 1, estate Concordia (A), as delineated on the Leo R. Sibilly, civil engineer, drawing file numbered C9-13-T55.

From the initial point L, distances in nautical miles, along direct courses between the hereinafter lettered points at geographic positions (latitudes north, longitudes west):

Eastward approximately 0.32 mile to point M, latitude 18 degrees 18 minutes 48 seconds, longitude 64 degrees 41 minutes 50 seconds in Sabbat Channel;

0.88 mile to point N, latitude 18 degrees 17 minutes 55 seconds, longitude 64 degrees 41 minutes 50 seconds in the Caribbean Sea;

0.40 mile to point O, latitude 18 degrees 17 minutes 55 seconds, longitude 64 degrees 42 minutes 15 seconds in the Caribbean Sea;

1.88 miles to point P, latitude 18 degrees 18 minutes 48 seconds, longitude 64 degrees 44 minutes 00 seconds in the Caribbean Sea;

1.74 miles to point Q, latitude 18 degrees 18 minutes 48 seconds, longitude 64 degrees 45 minutes 50 seconds in the Caribbean Sea;

0.45 mile to point R, latitude 18 degrees 19 minutes 15 seconds, longitude 64 degrees 45 minutes 50 seconds in Fish Bay;

Eastward approximately 0.08 mile to point S on the shore of Fish Bay, a corner in the present Virgin Islands National Park, as delineated on said drawing numbered NP-VI-7000, being the northwesterly corner of parcel numbered 2 estate Fish Bay, numbered 8 Reef Bay Quarter, and the terminus of the delineated course "south 78 degrees 52 minutes west distance 1,178.9 feet" as depicted on the Leo R. Sibilly, civil engineer, drawing file numbered G9-385-T56.

Thence running generally eastward along the present southerly park boundary as it follows the southerly shore of the island of Saint John as depicted on the said drawing numbered NP-VI-7000 to point L, the point of beginning.

The area described contains approximately 1,550 acres.

Lands, submerged lands, and waters added to the Virgin Islands National Park pursuant to this Act shall be subject to administration by the Secretary of the Interior in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4), as amended and supplemented.

SEC. 2. Within the boundaries of Virgin Islands National Park as established and adjusted pursuant to the Act of August 2, 1956 (70 Stat. 940), and as revised by this Act, the Secretary of the Interior is authorized to acquire lands, waters, and interests therein by purchase, donation, with donated funds, or by condemnation or exchange.

SEC. 3. Nothing in this Act shall be construed as authorizing any limitation on customary uses of or access to the areas specified in section 1 by residents of the Virgin Islands for bathing and fishing (including setting out of fishpots and landing boats), subject to such regulations as the Secretary of the Interior may find reasonable and necessary for protection of natural conditions and prevention of damage to marine life and formations.

SEC. 4. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

The Clerk will report the first committee amendment.

The Clerk read as follows:

Page 6, line 16, strike out the words "by residents of the Virgin Islands".

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

On page 6, line 22, strike out section 4 and insert in lieu thereof the following:

"SEC. 4. There are hereby authorized to be appropriated such sums, but not more than \$1,250,000, as are necessary to acquire lands pursuant to section 2 of this Act."

The committee amendment was agreed to.

Mr. RUTHERFORD. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. RUTHERFORD: Page 6, lines 12 and 13, strike out "lands, waters, and interest therein by purchase, donation, with donated funds, or by condemnation or exchange," and insert "lands, waters, and interests therein by purchase, exchange or donation or with donated funds."

The amendment was agreed to.

The CHAIRMAN. Under the rule the Committee rises.

Accordingly the Committee rose, and the Speaker pro tempore having resumed the chair, Mr. JONES of Missouri, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (S. 2429) to revise the boundaries of the Virgin Islands National Park, St. John, V.I., and for other purposes, pursuant to House Resolution 777, he reported the bill back to the House with sundry amendments adopted in the Committee of the Whole.

The SPEAKER pro tempore. Under the rule the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The bill was ordered to be read a third time and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken and the Chair announced that the ayes appeared to have it.

Mr. ARENDS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Further proceedings on the bill will go over until tomorrow.

Mr. ARENDS. Mr. Speaker, I withdraw my point of order.

FEDERAL-STATE COOPERATION

Mr. JONES of Missouri. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 3475) to provide further for cooperation with States in administration and enforcement of certain Federal laws, which is identical to the bill H.R. 12802 which was passed earlier in the day.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There being no objection, the Clerk read the Senate bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of Federal and State laws and regulations relating to the marketing of agricultural products and to the control or eradication of plant and animal diseases and pests, the Secretary of Agriculture is hereby authorized, in the administration and enforcement of such Federal laws within his area of responsibility, whenever he deems it feasible and in the public interest, to enter into cooperative arrangements with State departments of agriculture and other State agencies charged with the administration and enforcement of such State laws and regulations and to provide that any such State agency which has adequate facilities, personnel, and procedures, as determined by the Secretary, may assist the Secretary in the administration and enforcement of such Federal laws and regulations to the extent and in the manner he deems appropriate in the public interest.

Further, the Secretary is authorized to coordinate the administration of such Federal laws and regulations with such State laws and regulations wherever feasible. However, nothing herein shall affect the jurisdiction of the Secretary of Agriculture under any Federal law, or any authority to cooperate with State agencies or other agencies or persons under existing provisions of law, or affect any restrictions of law upon such cooperation.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken and the Chair announced that the ayes appeared to have it.

Mr. GROSS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Further proceedings on the bill will go over until tomorrow.

Mr. GROSS. Mr. Speaker, I withdraw the point of order.

CORRECTION OF ROLL CALL

Mr. WAGGONER. Mr. Speaker, on rollcall 224 I am recorded as absent. I was present and voted "aye." I ask unanimous consent that the permanent Record and Journal may be corrected accordingly.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

HOUR OF MEETING, 10 O'CLOCK, THURSDAY, SEPTEMBER 20

Mr. KEOGH. Mr. Speaker, I ask unanimous consent that when the House adjourns tomorrow it adjourns to meet at 10 o'clock a.m. on Thursday morning.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENTS TO PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

Mr. GRANT submitted the following conference report and statement on the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities:

CONFERENCE REPORT (H. REPT. No. 2408)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1037), to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12; and agree to the same.

Amendment numbered 1: That the Senate recede from its disagreement to the amendment of the House numbered 1, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following: "That paragraphs (6) and (7) of the first section of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), are amended to read as follows:

"(6) The term 'dealer' means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a 'dealer' in respect to sales of any commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a 'dealer' until the invoice cost of his purchases of perishable agricultural com-

modities in any calendar year are in excess of \$90,000; and (C) no person buying any commodity for canning and/or processing within the State where grown shall be considered a "dealer" whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph (4) of this section. Any person not considered as a "dealer" under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a "dealer";

"(7) The term "broker" means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a "broker" if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of \$90,000 in any calendar year."

"Sec. 2. The first section of such Act (7 U.S.C. 499a) is further amended by adding at the end thereof the following new paragraphs:

"(9) The term "responsibly connected" means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

"(10) The terms "employ" and "employment" mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment."

And the House agree to the same.

GEORGE M. GRANT,
HARLAN HAGEN,
W. PAT JENNINGS,
CHARLES M. TEAGUE,
CLIFFORD G. MCINTIRE,

Managers on the Part of the House.

ALLEN J. ELLENDER,
OLIN D. JOHNSTON,
SPESSARD L. HOLLAND,
GEORGE D. AIKEN,
MILTON R. YOUNG,

Managers on the Part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, submit the following statement to explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The only matter in disagreement between the Senate bill and the House amendments was the treatment to be accorded persons subject to the act solely by reason of their activities as retail dealers or frozen food brokers. The Senate limited the license fee which could be charged retail dealers and frozen food brokers to \$25 a year. The House permitted the license fee for retail dealers to be increased to a maximum of \$50, as provided by the bill for other licensees; but excluded retail dealers whose purchases of perishable agricultural commodities did not exceed \$100 thousand a year from the requirements of the act, and excluded all frozen food brokers who represent sellers only.

At present a retail dealer is subject to licensing if he buys as much as a ton of perishable agricultural commodities on each of 21 days during any calendar year, and a frozen food broker is subject to licensing if he negotiates the purchase or sale of any frozen fruits or vegetables. The Committee of Conference recommends that retail dealers purchasing less than \$90 thousand a year worth of perishable agricultural commodities, and frozen food brokers representing sellers only and negotiating sales of less than \$90 thousand a year worth of frozen fruits and vegetables, be excluded from the requirements of the act.

The number of retailers and frozen food brokers now subject to license and the number which the Department of Agriculture estimates would be subject to license under House amendment No. 1 and the conference substitute therefor are as follows:

RETAILERS

At present 3,528 retailers out of more than 230,000 are licensed. With a \$90,000 standard, about 1,200 would be licensed. With a \$100,000 standard, about 1,125 would have been licensed.

FROZEN FOOD BROKERS

At present 475 such brokers are licensed. With a \$90,000 standard, about 260 would be licensed.

The House made 12 amendments to the Senate bill. The Committee of Conference recommends that the Senate recede from its disagreement to the House amendments numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 and that the Senate recede from its disagreement to House amendment No. 1 and agree to the same with an amendment.

House amendment No. 1 excluded retail dealers purchasing not more than \$100 thousand worth of perishable agricultural commodities a year, and all frozen food brokers representing sellers only from the requirement of the act. The conference substitute would exclude retail dealers purchasing not more than \$90 thousand worth of perishable agricultural commodities a year, and frozen food brokers representing sellers only and negotiating not more than \$90 thousand worth of frozen fruits and vegetables a year.

House amendment No. 3 struck out the Senate provision limiting the license fee for retail dealers and frozen food brokers to \$25 a year. In view of the recommendation of the conference committee with respect to the exclusion of the smaller retail dealers and frozen food brokers, those that would remain subject to the act should be required to pay the same fee as other licensees, and the committee of conference therefore recommends that the Senate recede from its disagreement to amendment No. 3. The present maximum license fee under the act is \$25. The bill would raise the maximum license fee to \$50. During the hearings on the bill the Department indicated that for the first year it was not anticipated that the license fee would be more than \$36. The conferees would expect the Department to exert every effort to keep the fee within this figure and that the exclusion of the smaller retailers and frozen food brokers would not require an increase above this figure.

Amendments numbered 2, 4, 5, 6, 7, 8, 9, 10, 11, and 12 merely change section numbers to reflect the insertion of a new section 1 in the bill by House amendment No. 1. In view of the conference committee recommendation with respect to amendment No. 1, it recommends that the Senate recede from its disagreement to these technical amendments.

GEORGE M. GRANT,
HARLAN HAGEN,
W. PAT JENNINGS,
CHARLES M. TEAGUE,
CLIFFORD G. MCINTIRE,

Managers on the Part of the House.

FOWLING NETS—EXCISE TAX ON CERTAIN TELEVISION TUBES—LOCAL ADVERTISING

Mr. MILLS submitted the following conference report and statement on the bill (H.R. 6682) to provide for the exemption of fowling nets from duty:

CONFERENCE REPORT (H. REPT. No. 2412)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6682) to provide for the exemption of fowling nets from duty, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 1.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows: Page 2, line 15, of the Senate engrossed amendments, strike out "Sec. 3." and insert: "Sec. 2."; and the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

WILBUR D. MILLS,
CECIL R. KING,
THOMAS J. O'BRIEN,
NOAH M. MASON,
JOHN W. BYRNES,

Managers on the Part of the House.

HARRY FLOOD BYRD,
ROBERT S. KERR,
RUSSELL B. LONG,
JOHN J. WILLIAMS,
FRANK CARLSON,

Managers on the Part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6682) to provide for the exemption of fowling nets from duty, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: This amendment added a new section to the bill relating to the application of the manufacturers excise tax on radio and television components to certain tubes sold during the period beginning October 1, 1952, and ending August 31, 1955. The effect of the amendment would be to exempt the tubes from tax if sold to the manufacturer or producer of an article which (1) was primarily adapted for use as a component part of a television receiving set, (2) was not a taxable chassis or radio and television component, and (3) was sold to a manufacturer or producer of taxable television receiving sets. The Senate recedes.

Amendment No. 2: This amendment added a new section to the bill relating to the definition of the term "local advertising" for purposes of determining the amount excluded from the selling price on which the manufacturers excise tax is based. Under existing law, the term "local advertising" means only advertising which—

(A) is initiated or obtained by the purchaser or any subsequent vendee,

(B) names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) is broadcast over a radio station or television station or appears in a newspaper.

Under the Senate amendment, the term includes advertising which appears in a magazine or is displayed by means of an outdoor advertising sign or poster as well as advertising which appears in a newspaper

or is broadcast over a radio station or television station. The House recedes with a clerical amendment.

The House recedes from its disagreement to the amendment of the Senate to the title of the bill.

WILBUR D. MILLS,
CECIL R. KING,
THOMAS J. O'BRIEN,
NOAH M. MASON,
JOHN W. BYRNES,

Managers on the Part of the House.

HOUSEHOLD EFFECTS—MONOFILAMENT GILL FISH NETS—ACCIDENT AND HEALTH INSURANCE CONTRACT PREMIUMS

Mr. MILLS submitted the following conference report and statement on the bill (H.R. 12180) to extend for a temporary period the existing provisions of law relating to the free importation of personal and household effects brought into the United States under Government orders:

CONFERENCE REPORT (H. REPT. No. 2413)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12180) to extend for a temporary period the existing provisions of law relating to the free importation of personal and household effects brought into the United States under Government orders, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows: On page 1, line 5, of the Senate engrossed amendments, strike out "1828" and insert "1829"; and the Senate agree to the same.

Amendment numbered 2: That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"Sec. 3. (a) Section 809(d) (6) of the Internal Revenue Code of 1954 (relating to deduction for group life, accident, and health insurance) is amended—

"(1) by striking out 'group life insurance contracts and group accident and health insurance contracts' and inserting in lieu thereof 'accident and health insurance contracts (other than those to which paragraph (5) applies) and group life insurance contracts'; and

"(2) by striking out the heading and inserting in lieu thereof '(6) Certain accident and health insurance and group life insurance.—'

"(b) Section 815(c) (2) (C) of such Code (relating to policyholders surplus account) is amended by striking out 'group life and group accident and health insurance contracts' and inserting in lieu thereof 'accident and health insurance and group life insurance contracts'.

"(c) The amendments made by this section shall apply to taxable years beginning after December 31, 1962."

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

WILBUR D. MILLS,
CECIL R. KING,
THOMAS J. O'BRIEN,
JOHN W. BYRNES,
HOWARD H. BAKER,

Managers of the Part of the House.

HARRY FLOOD BYRD,
ROBERT S. KERR,
RUSSELL B. LONG,
JOHN J. WILLIAMS,
FRANK CARLSON,

Managers on the Part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12180) to extend for a temporary period the existing provisions of law relating to the free importation of personal and household effects brought into the United States under Government orders, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: This amendment adds a new section to the bill to permit duty-free entry of monofilament gill nets for use in fish sampling, under such rules and regulations as the Secretary of the Treasury may prescribe. The amendment is to apply to articles entered or withdrawn from warehouse for consumption on and after the day following the date of the enactment of the bill. The House recedes with a clerical amendment.

Amendment No. 2: This amendment adds a new section to the bill relating to accident and health insurance contract premiums. Under existing law, in computing gain or loss from operations life insurance companies are entitled to a special deduction of 2 percent of the premiums for the taxable year attributable to group accident and health insurance contracts. Senate amendment No. 2 extended the deduction to premiums attributable to individual accident and health insurance contracts (other than individual nonparticipating contracts which are issued or renewed for periods of 5 years or more of which are noncancellable contracts for which there are life insurance reserves). The amendment also provided a special 2-percent deduction with respect to both group and individual accident and health insurance contracts for computing underwriting income of casualty insurance companies.

Under the conference agreement, the House recedes with an amendment which (in effect) retains the provisions of the Senate amendment relating to life insurance companies and omits the provisions relating to casualty insurance companies. The extension of the 2-percent deduction to the individual accident and health contracts of life insurance companies was agreed to by the committee of conference in recognition of the competitive situation existing in the case of those companies not in a position to write group contracts. It recognizes, however, that the problem of how broad the application of this deduction should be is a matter which requires further review and consideration. On the one hand, questions have been raised as to whether a deduction for accident and health contracts is desirable in the case of life insurance companies,

whether the contracts are group contracts or individual contracts. On the other hand, it is recognized that if this deduction is retained in the case of life insurance companies, the Congress may want to consider the desirability of making a similar allowance in the case of casualty insurance companies. The committee of conference has requested the Treasury Department to report to the Ways and Means and Finance Committees on these problems at the next session of the Congress.

The House recedes from its disagreement to the amendment of the Senate to the title of the bill.

WILBUR D. MILLS,
CECIL R. KING,
THOMAS J. O'BRIEN,
JOHN W. BYRNES,
HOWARD H. BAKER,

Managers on the Part of the House.

SELF-EMPLOYED INDIVIDUALS' TAX RETIREMENT ACT OF 1962

Mr. MILLS submitted the following conference report and statement on the bill (H.R. 10) to encourage the establishment of voluntary pension plans by self-employed individuals, and for other purposes:

CONFERENCE REPORT (H. REPT. No. 2411)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10) to encourage the establishment of voluntary pension plans by self-employed individuals, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following: "That this Act may be cited as the 'Self-Employed Individuals Tax Retirement Act of 1962'.

"SEC. 2. QUALIFICATION OF PLANS.

"Section 401 of the Internal Revenue Code of 1954 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended—

"(1) by adding at the end of paragraph (5) of subsection (a) the following new sentence: 'For purposes of this paragraph and paragraph (10), the total compensation of an individual who is an employee within the meaning of subsection (c) (1) means such individual's earned income (as defined in subsection (c) (2)), and the basic or regular rate of compensation of such an individual shall be determined, under regulations prescribed by the Secretary or his delegate, with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan bears to the total compensation of such employees.';

"(2) by adding at the end of subsection (a) the following new paragraphs:

"(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, upon its termination or upon complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded,

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF
BUDGET AND FINANCE

(For information only;
should not be quoted
or cited)

Issued Sept. 24, 1962

For actions of Sept. 21, 1962

87th-2d, No. 171

Library services.....	37
Lumber industry.....	20,35
Migratory birds.....	8
Mining.....	9
Perishable commodities....	1
Personnel.....	6
Public works.....	34
Research.....	30
Ryukyu Islands.....	25
School lunch.....	18
Tariffs.....	6,7
Taxation.....	28
Textiles.....	31
Tobacco.....	22
Trade fairs.....	13,24
Transportation.....	15
User charges.....	19
Water compacts.....	10
Wildlife.....	27
Wilderness.....	2,33

CONTENTS

Adjournment.....	16,29
Appropriations.....	4
Area redevelopment.....	23
Buildings.....	26
Cotton.....	5,32
Drugs.....	14
Education.....	36
Farm labor.....	12,15
Farm program.....	3,17,32
Foreign aid.....	21,30
Forestry.....	20
Household effects.....	6
Information.....	11
Inspection services.....	19
Lands.....	9
Legislative program.....	15

HIGHLIGHTS: Sen. Mansfield defended ASC committees against recent criticism. Sens. Pearson and Mundt criticized conference report on farm bill. Sen. Humphrey commended USDA on its centennial anniversary. Sen. Neuberger inserted article on Oregon Dunes National Seashore controversy. Sen. Mundt urged aid for lumber industry. Senate passed school lunch fund apportionment bill. Sen. Humphrey expressed concern over House reductions in foreign aid appropriation bill. Sen. Monroney inserted article urging user charges on inspection services at airports. Rep. Dole criticized debate on farm bill conference report. Rep. Saylor criticized committee action on wilderness bill. Rep. Derwinski criticized cotton program.

HOUSE

1. PERISHABLE COMMODITIES. Both Houses agreed to the conference report on S. 1037, to amend the Perishable Agricultural Commodities Act as follows: Clarifies provisions dealing with the eligibility for license, or for employment by licensees, of persons guilty of specified acts and persons affiliated with them; authorizes an increase of license fees from \$25 per year to such higher rate not above \$50 as may prove necessary; eliminates the Export Apple and Pear Act from the acts administered with license fees received under the Perishable Agricultural Commodities Act, and authorizes appropriations to carry out the Export Apple and Pear Act; regulates the use of trade names by licensees to prevent deception; provides that opportunity for an oral hearing need not be provided in reparation cases unless the amount in dispute exceeds \$1,500 (instead of \$500); makes it clear that in an appeal from a reparation order bond must be filed within 30 days after entry of the order and provides that the bond shall be in cash, negotiable securities, or the undertaking of a recognized surety company, and defers license suspension in case of appeal until all judicial appeals have ended. This bill will now be sent to the President. pp.

19113, 19199

2. WILDERNESS. Rep. Saylor criticized Rep. Aspinall's defense of the action of the Interior and Insular Affairs Committee on the wilderness bill. pp. 19131-2
3. FARM PROGRAM. Rep. Dole criticized the debate on the conference report on H. R. 12391, the proposed Food and Agriculture Act of 1962, saying, "It is regrettable the Wheat Subcommittee chairman of the House Committee on Agriculture would not permit an exchange of questions and answers." pp. 19107-8
4. APPROPRIATIONS. Rep. Cannon inserted a table of appropriation bills, 87th Congress, 2nd session, as of Sept. 21, 1962. pp. 19132-3
5. COTTON. Rep. Derwinski criticized the cotton program and urged that "the Government ... get out of the cotton business and restore that commodity to a free market." p. 19127
6. PERSONNEL. By a vote of 324 to 8, agreed to the conference report on H. R. 12180, to extend until July 1, 1964, the existing provisions of law permitting the free importation of personal and household effects brought into the U.S. under Government orders. pp. 19108-11
7. TARIFFS. Agreed to the conference report on H. R. 6682, to provide for the exemption of fowling nets from duty. p. 19112
8. MIGRATORY BIRDS. The Merchant Marine and Fisheries Committee reported with amendment S. 3504, to provide for alternate representation of secretarial officers on the Migratory Bird Conservation Commission (H. Rept. 2453). p. 19144
9. MINING. Conferees were appointed on S. 3451, to provide relief for residential occupants of unpatented mining claims upon which valuable improvements have been placed. Senate conferees have already been appointed. p. 19126
Agreed to the conference report on H. R. 8134, to effect a statutory withdrawal of certain former Taylor Grazing Act lands near Phoenix, Ariz., from all forms of entry under the public land laws. p. 19127
Agreed to the conference report on H. R. 10566, to provide for the withdrawal and orderly disposition of mineral interests in certain public lands in Pima County, Ariz. p. 19127
10. COMPACTS. The Merchant Marine and Fisheries Committee reported without amendment S. 3431, to consent to the amendment of the Pacific Marine Fisheries Compact and to the participation of certain additional States in such compact in accordance with the terms of such amendment (H. Rept. 2454). p. 19144
11. INFORMATION. The Government Operations Committee issued a report pertaining to safeguarding of official information (H. Rept. 2456). p. 19144
12. FARM LABOR. The Rules Committee reported a resolution for the consideration of S. 1123, to amend the Fair Labor Standards Act of 1938, to extend the child labor provisions thereof to certain children employed in agriculture. p. 19144
13. TRADE FAIRS. The Merchant Marine and Fisheries Committee reported with amendment S. 3389, to promote the foreign commerce of the U.S. through the use of mobile trade fairs (H. Rept. 2463). p. 19144

House the passing of Mrs. Effegene (Locke) Wingo, a former Member of the House of Representatives, who represented the district which I now have the privilege and honor of representing.

Mrs. Wingo was born in Lockesburg, Sevier County, on April 13, 1883. She attended public and private schools and Union Female College, Oxford, Miss. She was graduated from Maddox Seminary, Little Rock, Ark., in 1901, and moved to Texarkana, Ark., in 1895, and to DeQueen, Ark., in 1897. She was elected as a Democrat on November 4, 1930, to the 71st Congress. Her husband before her had served in the House, representing this district for several terms. She was elected to fill the vacancy caused by the untimely death of her husband, Otis Theodore Wingo. Some of the older Members who were here at that time, I am sure, remember Otis Wingo and also his lovely wife, Mrs. Wingo.

On the same day that she was elected to succeed her husband in the House, she was elected to the 72d Congress and served from November 4, 1930, to March 3, 1933. She was not a candidate for renomination in 1932.

Mrs. Wingo wrote me a letter about a year ago in which she inquired about the consideration which the House and the Congress had given to a program that she, herself, had sponsored when she was in the Congress. She was the cofounder in 1934 of the National Institute of Public Affairs here in Washington, D.C., engaged in educational and research work.

Mrs. Wingo passed away September 20, in Brent Memorial Hospital, Burlington, Ontario, where she was living with her son at the time, Otis T. Wingo, and where he now lives.

Funeral services will be held this afternoon at 3 o'clock at St. Albans Church, interment in Rock Creek Cemetery.

Mrs. Wingo is survived by a daughter, Mrs. L. L. Sawyer, who lives here in Washington, D.C., and by her son, Otis T. Wingo, Jr. I know I express the sentiments of every Member of this House when we extend to them and all the family our deepest sympathy in the loss of their mother.

AMENDMENTS TO PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

Mr. GRANT. Mr. Speaker, I call up the conference report on the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 18, 1962.)

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. GRANT. I yield to the gentleman from Iowa.

Mr. GROSS. Are all of the amendments put into the bill in conference germane to the general subject matter of the bill?

Mr. GRANT. They are absolutely germane to the bill.

Mr. GROSS. I thank the gentleman.

(Mr. GRANT asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. GRANT. Mr. Speaker, the bill before us is a very important piece of legislation. It contains numerous improvements to the Perishable Agricultural Commodities Act and a provision for the increase in fees under that act which will permit it to continue to be self-supporting. The Perishable Agricultural Commodities Act is one of the oldest and most successful regulatory programs operated by the Department of Agriculture. Its basic purpose is to assure producers of fresh fruits and vegetables that they will receive fair treatment and fair payment when their commodities are shipped to buyers in other States, and to assure those buyers and all of the handlers along the route that they will receive the kind of commodities they are paying for and that they, too, will receive equitable treatment.

The act has been entirely self-supporting and has paid its way by collection of annual fees, presently set at the maximum of \$25 permitted under the act, collected from those who are licensed under the act. The Department has reached the point where it is no longer able to operate its program within this \$1.25 limitation and one of the purposes of this bill is to increase the amount of the license fee which may be charged in order to continue to have this program entirely self-sustaining. The bill permits an ultimate increase in the license fees to \$50 per year, if this should become necessary. No such increase is needed or contemplated at the present time, however, and the Department has stated, and the committee of conference so understands, that the immediate increase in license fees will be to a figure not in excess of \$36. If, in later years, an additional increase is found to be necessary, this is to be announced well in advance and subject to discussion by the trade and by the appropriate committees of Congress before it is placed into effect.

In the form in which this bill was introduced in both the House and the Senate, Mr. Speaker, it contained no element of controversy.

During the hearings, however, amendments to the bill were suggested by representatives of food retailers and of frozen-food brokers, both of whom are licensed under the act—the retailers only if they do an annual business in fresh and frozen fruits and vegetables exceeding approximately \$30,000 worth per year. During the hearings, representatives of both these groups asked for further exemptions for their particular group from the operations of the act.

The Senate responded to this request by retaining the basic requirements for

licensing of retailers and frozen-food brokers exactly where they were in the act but providing that the increase in license fee should not apply to these two groups.

The House went further in acceding to the request of these groups and provided that all retailers doing an annual business in fresh and frozen fruits and vegetables of less than \$100,000 per year, and all frozen food brokers representing vendors should be eliminated from registration under the act. These provisions were the only items of the bill in controversy between the House and the Senate. While I was very much in favor of retaining the House version, this was found impossible.

The conferees have reached what I believe to be an equitable compromise on this matter as set out in the conference report. The conference report will provide that this act will not cover any retailer who does an annual business of less than \$90,000 per year in fresh and frozen fruits and vegetables, and will apply the same minimum figure, \$90,000, to brokers of frozen fruits and vegetables. No broker of frozen fruits and vegetables will be required to register under the act if he does a business of less than \$90,000 per year in these commodities.

The SPEAKER pro tempore. The question is on the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GIFTS TO MINORS IN THE DISTRICT OF COLUMBIA

Mr. McMILLAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 11018) to amend the act concerning gifts to minors in the District of Columbia, with Senate amendments thereto, and consider the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 10, strike out all after line 12 over to and including line 14 on page 11, and insert:

"Sec. 5. (a) A custodian shall be entitled to reasonable compensation for his services and to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties: *Provided*, That a custodian may act without compensation for his services.

"(b) Compensation shall be according to:

"(1) Any statute of the District of Columbia applicable to custodians;

"(2) Any statute of the District of Columbia applicable to guardians;

"(3) An order of the court.

"(c) Except as otherwise provided in this Act, a custodian shall not be required to give a bond for the performance of his duties.

"(d) A custodian not compensated for his services shall not be liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing, or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this Act."

Page 15, after line 7, insert:

"(c) Nothing here shall be deemed to repeal or modify the Internal Revenue Code of 1954, as amended, and the District of Columbia Income and Franchise Tax Act of 1947, as amended."

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

Mr. GROSS. Reserving the right to object, Mr. Speaker, is a copy of this bill available? I have asked for copies of all bills coming up today.

Mr. McMILLAN. Mr. Speaker, this bill passed the House some time ago. The other body amended this proposed legislation and returned it to the House. I imagine copies of the bill are available.

Mr. GROSS. There is no report nor is there a copy of the bill at the desk.

Mr. McMILLAN. I have just stated the bill passed the House some time ago and was amended by the Senate, the report and bill should be available.

Mr. GROSS. I have no doubt it passed the House some time ago, I will say to my friend from South Carolina. It, obviously, had to. But I have nothing here to go on. Will the gentleman please explain the bill and the amendments?

Mr. McMILLAN. The Senate added an amendment to the bill which has to do with gifts to minors in the District of Columbia. We are amending the Senate amendment so as to make certain that the person who is making the gift can set the fee for the person who administers his estate.

Mr. GROSS. You say this bill was amended?

Mr. McMILLAN. It was amended in the Senate and was returned. My committee proposes to amend the Senate amendment by inserting language to protect the donor.

Mr. GROSS. Are all the amendments in this bill, as it is presently before us, germane to the subject matter of the bill?

Mr. McMILLAN. Absolutely, yes. If the gentleman from Iowa would care to see a copy of the bill, he may have my copy.

Mr. GROSS. I would not be able to do very much with it in this short space of time.

The SPEAKER pro tempore [Mr. WALTER]. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

The SPEAKER pro tempore. The Clerk will read the first Senate amendment.

The Clerk read as follows:

Page 10, strike out all after line 12 over to and including line 14 on page 11, and insert:

"SEC. 5. (a) A custodian shall be entitled to reasonable compensation for his services and to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties: *Provided*, That a custodian may act without compensation for his services.

"(b) Compensation shall be according to:

"(1) Any statute of the District of Columbia applicable to custodians;

"(2) Any statute of the District of Columbia applicable to guardians;

"(3) An order of the court.

"(c) Except as otherwise provided in this Act, a custodian shall not be required to give a bond for the performance of his duties.

"(d) A custodian not compensated for his services shall not be liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing, or

gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this Act."

Mr. McMILLAN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. McMILLAN moves that the House concur in Senate amendment 1 with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment in subsection (b) and subparagraphs (1), (2), and (3) thereof, of section 5, insert the following:

"(b) Compensation for the guardian or custodian shall be according to:

"(1) Any direction of the donor when the gift is made, provided that it is not in excess of any statutory limitation of the District of Columbia for guardians or custodians;

"(2) Any statute of the District of Columbia applicable to custodians or guardians;

"(3) Any order of the court."

Mr. McMILLAN. Mr. Speaker, the purpose of my amendment to the Senate amendment is to assure and provide that any donor of a gift may fix the compensation for the guardian or custodian—which the House bill originally provided and which the Senate struck out—but with the proviso that such compensation will not be in excess of that allowed by District of Columbia law for guardians or custodians.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from South Carolina [Mr. McMILLAN].

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will read the next committee amendment.

The Clerk read as follows:

Page 15, after line 7, insert.

"(c) Nothing here shall be deemed to repeal or modify the Internal Revenue Code of 1954, as amended, and the District of Columbia Income and Franchise Tax Act of 1947, as amended."

Mr. McMILLAN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. McMILLAN moves that the House concur in the Senate amendment No. 2.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from South Carolina.

The motion was agreed to.

A motion to reconsider the votes by which action was taken on the several motions was laid on the table.

AMENDING SECTION 305, COMMUNICATIONS ACT OF 1934

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up the resolution, House Resolution 779, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11732) to amend section 305 of the Communications Act of 1934, as amended. After general debate, which shall be confined to the bill, and shall continue not to exceed

one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. SISK. Mr. Speaker, I yield 30 minutes to the gentleman from California [Mr. SMITH] and pending that I yield myself such time as I may consume.

The SPEAKER. The gentleman from California is recognized.

Mr. SISK. Mr. Speaker, House Resolution 779 makes in order the consideration of the bill H.R. 11732 to amend section 305 of the Communications Act of 1934, as amended. It provides for 1 hour of debate and is an open rule.

The purpose of the legislation, Mr. Speaker, is to amend the Communications Act of 1934 to authorize the President to license foreign governments to operate low-power point-to-point radio stations, as distinguished from broadcasting stations, in the District of Columbia, for transmission of messages to points outside the United States. This legislation is needed in order to enable the U.S. Government to offer reciprocity when attempting to secure permission from foreign governments for the establishment by the United States of radio stations in foreign countries. At present, the Communications Act prohibits the granting of such authority to noncitizens.

Mr. Speaker, it is felt that with this permission which would be on a very limited basis and very tightly controlled, that the reciprocity that the United States could get by being permitted to establish radio stations in foreign countries would be a substantial gain. Therefore, Mr. Speaker, I urge the adoption of House Resolution 779.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of California. Mr. Speaker, I yield myself 10 minutes.

(Mr. SMITH of California asked and was given permission to revise and extend his remarks.)

Mr. SMITH of California. Mr. Speaker, House Resolution 779 is an open rule providing for the consideration of H.R. 11732, which is a measure known as the Amendment to the Communications Act of 1934. It will permit the President under reciprocal agreement with other countries to permit the operation of a radio station at the Embassy of a foreign country in Washington, D.C., providing we are allowed to have a radio station at our Embassy in the country with which the agreement is worked out.

I was opposed to the bill as originally reported but in the meantime it has been possible to work out an amendment which the chairman told me he would accept and which I believe would help the bill and take care at least in part of

However, Madam President, in this city there are many developments for educational purposes, as well as scientific purposes.

So I considered the bill, and found that it has most serious and worthwhile purposes.

I also point out that even if the only purpose of the bill were educational, there is nothing wrong with that.

Next, I point out that the economy argument is only a popgun argument, because almost everyday Congress appropriates hundreds of millions of dollars; and attempts to reduce the proposed expenditures generally fail.

In addition, I oppose the double-standard argument against the bill—the argument based on the belief that appropriations should be made for developments in other cities, but not for developments in the Nation's Capital.

Madam President, for all these reasons, I support the bill.

AMENDMENTS TO PERISHABLE AGRICULTURE COMMODITIES ACT, 1930—CONFERENCE REPORT

Mr. HOLLAND. Madam President, will the Senator from Wisconsin yield 2 minutes to me, in order that I may submit a conference report?

Mr. PROXMIRE. I yield 2 minutes for that purpose.

The PRESIDING OFFICER. The Senator from Florida is recognized for 2 minutes.

Mr. HOLLAND. Madam President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1037) to amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read, for the information of the Senate.

The legislative clerk read the report. (For conference report, see House proceedings of Sept. 18, 1962, pp. 18622-18623, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. HOLLAND. Madam President, the conference report is on Senate bill 1037, to amend the Perishable Agricultural Commodities Act of 1930. The conference report is signed by all the Senate conferees and all the House conferees.

All of the administrative corrective provisions which were in the original bill, as requested by the fruit and vegetable interests of the Nation and by the U.S. Department of Agriculture, were included in both versions of the bill, and thus were not in conference.

The only matters in conference were presented by House amendments by which it was proposed to limit the coverage in the field of retail dealers and in the field of frozen food brokers. The

conference amendments on that subject were a compromise as between the House position and the Senate position; and I know of no opposition at all to the conference report, which recently has been adopted by the House of Representatives.

Madam President, I ask for approval of the report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

CHICAGO INTERNATIONAL TRADE FAIR

Mr. DIRKSEN. Madam President, will the Senator from Wisconsin yield briefly to me?

Mr. PROXMIRE. I yield 1 minute to the Senator from Illinois.

Mr. DIRKSEN. Madam President, in the last 4 years, the Chicago International Trade Fair has become the leading annual international business, cultural, and entertainment event in the Western Hemisphere. No other American trade fair attracts as many foreign exhibitors to our shores and as many buyers and sellers and general public from as wide an area. We in the Midwest are very proud of the stature of the Chicago Fair and the great amount of business it generates. The World Marketing and Economic Development Conference held in conjunction with the exposition is one of the Nation's outstanding forums for the discussion of current problems in foreign trade. The fair was developed by the Chicago Association of Commerce and Industry as a promotion effort for the St. Lawrence Seaway. Increased use of the seaway has meant more jobs for midwesterners and has peaked an interest in exporting among businessmen in the Nation's heartland. Examples of the interest generated by the fair are illustrated in editorials from the Chicago Sunday Tribune, July 22 and July 29, 1962, and the Chicago Sun-Times, July 22, 1962. I ask unanimous consent that the articles be printed at this point in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Chicago Sunday Tribune, July 22, 1962]

COME TO THE FAIR

For the fourth year in succession, the city's lakefront becomes a showcase for the world with the opening July 25 of the annual Chicago international fair in McCormick Place.

By the time its doors close on August 12, its sponsor, the Chicago Association of Commerce and Industry, expects that 750,000 visitors will have entered the air-conditioned fairgrounds, including 30,000 professional buyers. All this despite the competition of Seattle's World Fair and New York's trade exposition.

Exhibitors are coming from 25 nations on five continents and from every State in the Union to display their wares in Chicago, key to the richest international market in the world. A doubting Thomas doubts that statement at his peril, for Illinois, which shipped \$1,727,900,000 worth of goods abroad in 1960 alone, tops its 49 sisters as the Nation's leading export State.

This year, the fair is the focal point of the city's international open-house program.

It is being held simultaneously with the World Marketing and Economic Development Conference and the Unity of Americas Conference. With a record tide of oversea visitors expected, this becomes an opportunity for Chicagoans to display their traditional hospitality to the city's guests, and to sample the commercial wonders of the world on their own lakefront.

[From the Chicago Sunday Tribune, July 29, 1962]

AROUND THE WORLD

In McCormick Place we overheard a mother telling her husband: "We'll meet you in Greece in half an hour. You take Wilma to Japan. If she gets tired, let her sit down in that Finnish sauna. I'm taking Peter to Brazil." And she did.

Three hours, at a leisurely stop-look-and-listen pace, carries any visitor at Chicago's fourth annual International Fair into large areas of the far, middle, and near east, Latin America, Africa, Europe, and North America. For the armchair traveler unable to jet around the world at a moment's notice, 25 foreign nations and a host of American exhibitors have set out their best wares on his own lakefront doorstep. Here, in capsule form, is the world, or a good portion of it.

Milling machines and locomotives, back-scratchers and tiny Japanese transistor radios, Spanish guitars and magnificent Mexican silver ornaments, sugar hammers from Chad and Egyptian tennis rackets, potent liquors and delectable European wines, Austrian costume jewelry and Greek pottery, Italian and Israeli textiles, and Polish beer and hams.

Even to an experienced world traveler, Chicago's lakefront fair is a surprising world, peopled with flashing water skiers, circus clowns, sword dancers, daring acrobats, celestial singers, horses, dogs, a baby elephant, and the most gorgeous red and gold dragon that ever undulated across a stage outside of China.

However, we found ourselves returning, along with thousands of other visitors, to the world market at the north end of the fairgrounds. The great national pavilions stand as a tribute to their architects and designers, but the world market, set apart in half a city block, is a shopper's treasure house, filled with a million dollars worth of imported merchandise, all for sale.

Buyers clustered about Danish handbags, Austrian hats, Bavarian china, Egyptian cotton and Israeli lace, Kenya wood carvings and Spanish furniture, Philippine shirts and sheep-lined Polish parkas, Japanese gardens, Italian coffeemakers and Colombian coffee. And in the international food supermarket, what shopper could resist French gourmet vegetables, distilled lime oil, celery flavored biscuits, whole ginger, kangaroo steaks, fried grasshoppers or smoked sparrows? Well, maybe not sparrows. We never have been able to develop a taste for sparrows.

[From the Chicago Sun-Times, July 22, 1962]

CHICAGO'S GLOBAL SUPERMARKET

The Chicago International Trade Fair has become renowned in the 3 years of its existence as a world marketplace. Last year it took on greater dimensions and new grandeur when it was held in McCormick Place.

On Wednesday, McCormick Place doors will open on the city's fourth annual international fair and, as has been the case each year in the past, this one promises to outdo the others that have been held before. There will be entertainment and fireworks, and exotic as well as practical exhibits to see. Twenty-five nations have registered to show their wares this year.

National exhibits of goods and artifacts, will come from five continents—even more than can be seen at the Seattle World's Fair. Until August 12, Chicagoans and their

guests will have an unrivaled opportunity to become acquainted under one roof with the newest products from storied, faraway places which ordinarily they might never have a chance to see.

But there is a deeper and more significant meaning to the fair. It demonstrates that people of many nationalities can compete peaceably in a central marketplace for customers, as they will be doing in McCormick Place for the next 2½ weeks, and profit as their specialties gain acceptance. There will be no Iron or Bamboo Curtains to disturb human relationships on the lakefront between now and next month.

For Chicagoans, the fair is a reminder that they are now residents of a great seaport, thanks to the St. Lawrence Seaway, and that 500,000 persons in this area are dependent on U.S. export trade. To sell abroad, Americans must buy abroad, and this is exactly the type of two-way traffic the fair is designed to promote.

CONSTRUCTION AND OPERATION OF NATIONAL FISHERIES CENTER AND AQUARIUM IN THE DISTRICT OF COLUMBIA

The Senate resumed the consideration of the bill (H.R. 8181) to authorize the construction of a National Fisheries Center and Aquarium in the District of Columbia and to provide for its operation.

Mr. PROXMIRE. Madam President, the Senator from Kentucky [Mr. COOPER], who is a very distinguished and very able Member of this body, has said he supports the bill because it provides for research and for improving our production of food by means of fisheries and conservation.

I have read the bill very carefully, and one cannot find in it or in the committee report—except in the vaguest generalities in the committee report—any indication that even 1 nickel would be spent for research.

It is proposed to set up an advisory board to counsel with the Secretary of Agriculture in regard to the operations of the proposed aquarium. The bill provides that the advisory board shall be composed of two Members of the Senate, two Members of the House, one person closely associated with sport fishing, one person closely associated with commercial fishing, and two members at large from the general public. But no provision is made that even one member of the advisory board shall have any kind of scientific background or research background or ichthyologist background, or anything of the sort.

Furthermore, on page 11 of the report there is a list of the estimated employment in connection with the proposed aquarium, including the employees to operate the aquarium. We find listed an architect, an aquarist, an engineer, an executive, and a stenographer. But none of them is listed as doing any research work. Madam President, although the bill masquerades as a research bill, unquestionably the purpose is to provide another scenic object and recreational object and, to some extent, an object for the education of visitors to the city of Washington.

Mr. RANDOLPH. Madam President, will the Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. RANDOLPH. I understand that the office of the Senator from Wisconsin is operated by a competent staff. I do not see on the published lists that any member of his staff is listed as a research assistant or a scientific assistant; generally, a Senator's employees are listed as clerks. Yet no doubt one or more of them functions as a research assistant to the Senator. Is not that true?

Mr. PROXMIRE. But is the Senator from West Virginia implying that the architect or the engineer or the stenographer listed on page 11 of the committee report will do 1 minute of research or could do it or will be an expert in ichthyology?

Mr. RANDOLPH. I do not even know how to spell "ichthyology."

Mr. PROXMIRE. Very well; the study of fish biology, disease, or research. Does the Senator imply that?

Mr. RANDOLPH. The Senator from West Virginia merely made the statement that a person can discharge certain obligations and assignments even though he may be listed on a payroll in other categories.

Mr. PROXMIRE. I accept that statement completely, but I think we all know, as Members of the Senate, that we do not hire a man who is classified as an architect, an engineer, an aquarist, an executive, or a stenographer to engage in research on fish. It is true that at the bottom of the list there is an item "personal services" category, including some \$38,000.

As I said earlier, it is possible that persons may be hired for some research in this case, but there is no indication in the report or in the bill that they would be hired for such service.

Mr. RANDOLPH. Madam President, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. RANDOLPH. Mention has been made of the hiring of an architect. The architect is to be hired only for 2 years, during the time of construction. The entire group of people listed in the report are for the construction period only.

Mr. PROXMIRE. That is true of the architect only. Others will be hired for 5 or 6 years.

Mr. RANDOLPH. I wanted to make sure.

Mr. PROXMIRE. The bill before the Senate has been improved by adding the Miller amendment, but if any Member of the Senate feels that by adding the Miller amendment we have now provided that the cost of construction will be borne by the members of the general public who go to the aquarium, he is deceiving himself. The Miller amendment provides:

That the expenditure of such funds shall be made subject to the condition that the Secretary of the Interior shall establish charges relating to visitation to and uses of the National Fisheries Center and Aquarium as in the Secretary's judgment will produce revenue to (a) liquidate the costs of construction within a period of not to exceed thirty years and (b) pay for the annual operation and maintenance costs thereof.

There is no question that, on the basis of experience throughout the country for years and years, it will be impossible to provide charges which will be adequate to cover the \$800,000 maintenance costs which Mr. Hagen, of the Bureau of Sport Fisheries and Wildlife, has told me will be the maintenance cost, plus the \$400,000 or \$500,000 amortization and interest cost which will be required. No public aquarium raises anything like that amount, and private aquariums gross the money only because they provide ornate, attractive shows, which are vigorously promoted at considerable cost, and undoubtedly not for less. This aquarium would have no such promotion.

While the bill has been improved, we deceive ourselves if we think the Miller amendment will result in a substantial diminution of cost to the taxpayers.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PROXMIRE. I yield myself 1 more minute.

Mr. BIBLE. Madam President, will the Senator yield me 1 minute for the purpose of calling up a conference report?

Mr. PROXMIRE. I yield 1 minute to the Senator from Nevada for the purpose of calling up a conference report.

SALE OF MINERAL ESTATE IN CERTAIN LANDS—CONFERENCE REPORT

Mr. BIBLE. Madam President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8134) to authorize the sale of mineral estate in certain lands. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of September 20, 1962, p. 19069, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

Mr. BIBLE. I thank the Presiding Officer. The conference report was signed by all members of the conference on both the House and Senate side.

WITHDRAWAL AND ORDERLY DISPOSITION OF MINERAL INTERESTS IN CERTAIN PUBLIC LANDS, PIMA COUNTY, ARIZ.—CONFERENCE REPORT

Mr. BIBLE. Madam President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10566) to provide for the withdrawal and orderly disposition of



Public Law 87-725
87th Congress, S. 1037
October 1, 1962

An Act

76 STAT. 673.

To amend the provisions of the Perishable Agricultural Commodities Act, 1930, relating to practices in the marketing of perishable agricultural commodities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraphs (6) and (7) of the first section of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a), are amended to read as follows:

“(6) The term ‘dealer’ means any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce, except that (A) no producer shall be considered as a ‘dealer’ in respect to sales of any such commodity of his own raising; (B) no person buying any such commodity solely for sale at retail shall be considered as a ‘dealer’ until the invoice cost of his purchases of perishable agricultural commodities in any calendar year are in excess of \$90,000; and (C) no person buying any commodity for canning and/or processing within the State where grown shall be considered a ‘dealer’ whether or not the canned or processed product is to be shipped in interstate or foreign commerce, unless such product is frozen or packed in ice, or consists of cherries in brine, within the meaning of paragraph (4) of this section. Any person not considered as a ‘dealer’ under clauses (A), (B), and (C) may elect to secure a license under the provisions of section 3, and in such case and while the license is in effect such person shall be considered as a ‘dealer’;

“(7) The term ‘broker’ means any person engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively, except that no person shall be deemed to be a ‘broker’ if such person is an independent agent negotiating sales for and on behalf of the vendor and if the only sales of such commodities negotiated by such person are sales of frozen fruits and vegetables having an invoice value not in excess of \$90,000 in any calendar year.”

SEC. 2. The first section of such Act (7 U.S.C. 499a) is further amended by adding at the end thereof the following new paragraphs:

“(9) The term ‘responsibly connected’ means affiliated or connected with a commission merchant, dealer, or broker as (A) partner in a partnership, or (B) officer, director, or holder of more than 10 per centum of the outstanding stock of a corporation or association;

“(10) The terms ‘employ’ and ‘employment’ mean any affiliation of any person with the business operations of a licensee, with or without compensation, including ownership or self-employment.”

SEC. 3. The third sentence of section 3(b) of such Act (7 U.S.C. 499c(b)) is amended to read as follows: “Upon the filing of the application, and annually thereafter, the applicant shall pay such fee as the Secretary determines necessary to meet the reasonably anticipated expenses for administering this Act and the Act to prevent the destruction or dumping of farm produce, approved March 3, 1927 (7 U.S.C. 491-497), but in no event shall such fee exceed \$50. Such fee, when collected, shall be deposited in the Treasury of the United States as a special fund, without fiscal year limitation, to be designated as the ‘Perishable Agricultural Commodities Act Fund’, which shall be available for all expenses necessary to the administration of this Act and the Act approved March 3, 1927, referred to above: *Provided*, That financial statements prescribed by the Director of the Bureau of the Budget for the last completed fiscal year, and as estimated for the current and ensuing fiscal years, shall be included in the budget as

Perishable Agricultural Commodities Act, 1930, amendment. 50 Stat. 725; 46 Stat. 532. Definitions.

License fees. 64 Stat. 217.

44 Stat. 1355.

"Perishable Agricultural Commodities Act Fund."

submitted to the Congress annually. The Secretary shall give public notice of any increase to be made in the annual fee prescribed by him hereunder and shall allow a reasonable time prior to the effective date of such increase for interested persons to file their views on or objections to such increase."

46 Stat. 533.

SEC. 4. Section 3 of such Act (7 U.S.C. 499c) is further amended by adding at the end thereof the following new subsection:

Trade names.

"(c) A licensee may conduct business in more than one trade name or change the name under which business is conducted without requiring an additional or new license. The Secretary may disapprove the use of a trade name if, in his opinion, the use of the trade name by the licensee would be deceptive, misleading, or confusing to the trade, and the Secretary may, after notice and opportunity for a hearing, suspend for a period not to exceed ninety days the license of any licensee who continues to use a trade name which the Secretary has disapproved for use by such licensee. The Secretary may refuse to issue a license to an applicant if he finds that the trade name in which the applicant proposes to do business would be deceptive, misleading, or confusing to the trade if used by such applicant."

Bankruptcy.
70 Stat. 726.

SEC. 5. Section 4(a) of such Act (7 U.S.C. 499d(a)) is amended by inserting before the period at the end thereof ": *And provided further*, That the license of any licensee shall terminate upon said licensee, or in case the licensee is a partnership, any partner, being discharged as a bankrupt".

SEC. 6. Section 4(b) of such Act (7 U.S.C. 499d(b)) is amended to read as follows:

License re-
fusal.

"(b) The Secretary shall refuse to issue a license to an applicant if he finds that the applicant, or any person responsibly connected with the applicant, is a person who, or is or was responsibly connected with a person who—

7 USC 499h.

"(A) has had his license revoked under the provisions of section 8 within two years prior to the date of the application or whose license is currently under suspension;

7 USC 499b.

"(B) within two years prior to the date of application has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect;

44 Stat. 1355.

"(C) within two years prior to the date of the application, has been found guilty in a Federal court of having violated the provisions of the Act of March 3, 1927 (7 U.S.C. 491-497), relating to the prevention of destruction and dumping of farm produce; or

7 USC 499g.

"(D) has failed, except in the case of bankruptcy and subject to his right of appeal under section 7(c), to pay any reparation order issued against him within two years prior to the date of the application."

SEC. 7. Section 4(c) of such Act (7 U.S.C. 499d(c)) is amended to read as follows:

Period of
license in-
eligibility.

"(c) Any applicant ineligible for a license by reason of the provisions of subsection (b) of this section may, upon the expiration of the two-year period applicable to him, be issued a license by the Secretary if such applicant furnishes a surety bond in the form and amount satisfactory to the Secretary as assurance that his business will be conducted in accordance with this Act and that he will pay all reparation orders which may be issued against him in connection with transactions occurring within four years following the issuance of the license, subject to his right of appeal under section 7(c). In the event such applicant does not furnish such a surety bond, the Secretary

Post, p. 675.

shall not issue a license to him until three years have elapsed after the date of the applicable order of the Secretary or decision of the court on appeal. If the surety bond so furnished is terminated for any reason without the approval of the Secretary the license shall be automatically canceled as of the date of such termination and no new license shall be issued to such person during the four-year period without a new surety bond covering the remainder of such period. The Secretary, based on changes in the nature and volume of business conducted by a bonded licensee, may require an increase or authorize a reduction in the amount of the bond. A bonded licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and upon failure of the licensee to provide such bond his license shall be automatically suspended until such bond is provided."

SEC. 8. Subsections (c) and (d) of section 6 of such Act (7 U.S.C. 499f) are amended by striking out "\$500" each place it appears and inserting in lieu thereof "\$1,500".

74 Stat. 200;

48 Stat. 587.

SEC. 9. Section 7(c) of such Act (7 U.S.C. 499g(c)) is amended by striking the second sentence thereof and substituting therefor the following: "Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States."

Bond on appeal.

48 Stat. 587;

54 Stat. 214.

SEC. 10. Section 7(d) of such Act (7 U.S.C. 499g(d)) is amended by striking the proviso at the end of the section and substituting therefor the following: "Provided, That if on the appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied."

Stay of li-
cense termin-
ation on ap-
peal.

50 Stat. 729.

SEC. 11. Section 8(b) of such Act (7 U.S.C. 499h(b)) is amended to read as follows:

Employment
of certain per-
sons by licen-
sees.

70 Stat. 727.

"(b) Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person--

"(1) whose license has been revoked or is currently suspended by order of the Secretary;

"(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 2, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

"(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 7(c).

7 USC 499b.

Ante, p. 675;
7 USC 499g.

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 2, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this Act and that the licensee will pay all reparation awards, subject to its right of appeal under section 7(c), which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days' notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section."

SEC. 12. The Act of June 10, 1933 (48 Stat. 123; 7 U.S.C. 581-589), popularly known as the Export Apple and Pear Act, is amended by adding at the end thereof a new section as follows:

"SEC. 10. There are hereby authorized to be appropriated such sums as may be necessary for the administration of this Act."

Approved October 1, 1962.

Appropriation.

